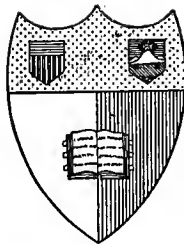




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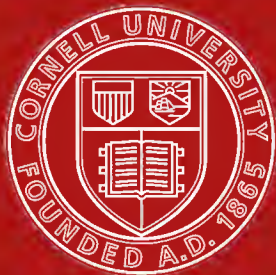
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FROM THE LIMBO OF THE PAST.

FAMOUS FIGHTS
FOR
ENGLISH LIBERTY.

1.

THE TRIAL OF THOMAS
EARL OF STRAFFORD.

BY
J. SCOTT HARSTON,
SOLICITOR AND NOTARY PUBLIC,
HONGKONG.

1916.

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HONGKONG.

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PREFACE.

If an apology be deemed necessary from the author for the publication of this pamphlet—the first of a series which he hopes to issue—he would plead that, as the subject of “Liberty” is one which ought to appeal to all, the ensuing pages should not be without interest, especially at the present juncture.

The story of the events which preceded the Earl of Strafford’s Trial, and which were to a considerable extent but a repetition of those which had occupied a large place in English History during the previous hundred and fifty years, shows that such events in effect constitute the prototype in a different guise of the System under which the German Empire (whose subjects cannot have possessed that instinctive love of “Freedom” which the Englishman has always shown, and which has enabled him to successfully combat all attempts at its destruction) is now tottering to its ruin.

When we remember that England has twice previously saved the German States from extinction, namely by means of Marlborough in 1700, and largely by the aid of Wellington in the succeeding century, it seems somewhat ironical that on the third occasion of her intervention in German affairs, she should play the role of liberator against a Tyrant raised “Frankenstein-like” from those very States which she herself rescued from destruction.

Those who study the two periods carefully, will see that the era in Germany’s History from 1860 to the present day betokens an attitude on the part of her rulers towards her own subjects (and it may be added towards those of other nations) of great similarity to that of the Tudors and Stuarts towards our ancestors—thanks to whose high moral courage and heroic sacrifices, we of the present age largely owe that ingrained respect for “Liberty” which is of the very breath of our nostrils.

The trial here dealt with, is one that has vexed the minds of many students of history, some of whom have been far from dispassionate in the views thereof which they have given forth for public consumption—a state of affairs for which the momentousness of the occasion is doubtless largely responsible.

The author has endeavoured to follow the example of Rushworth (on whom he has drawn copiously for the facts and proceedings connected with the Trial) and to thus treat a heated controversy with at least attempted impartiality—always bearing in mind that passage in Hallam's great work on the Constitutional History of England, where he remarks

Civil liberty, in this Kingdom, has two direct guarantees; the open administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of parliament, without let or interruption, to inquire into, and obtain the redress of public grievances. Of these, the first is by far the most indispensable; nor can the subjects of any State be reckoned to enjoy a real freedom, where this condition is not found both in its judicial institutions and in their constant exercise.

The author would add that to him this production, undertaken in his spare hours, has been a labour of love, and he trusts that it may be deemed of some utility.

J. S. H.

2nd February, 1916.

FAMOUS FIGHTS FOR ENGLISH LIBERTY.

1

*THE TRIAL OF THOMAS EARL OF STRAFFORD
LORD LIEUTENANT OF IRELAND UPON AN
IMPEACHMENT OF HIGH TREASON BY THE
COMMONS THEN ASSEMBLED IN PARLIAMENT
IN THE NAME OF THEMSELVES AND OF ALL
THE COMMONS IN ENGLAND.*

*BEGUN IN WESTMINSTER HALL ON THE
22nd MARCH, 1641, AND CONTINUED BEFORE
JUDGMENT WAS GIVEN UNTIL THE 10th
MAY, 1641.*

In his well known “faithfully collected and impartially published without observation or reflection” collection of Papers relative to this Trial, published in the year 1680, Rushworth at the outset of his Preface weightily observes :—

I cannot think that there wants an Apology for publishing the ensuing Papers, although the Press seems overcharged. The Trial of Thomas Earl of Strafford was and is some way or other the concern of every man in England.

All the Commons of England by their Deputies in Parliament were his Accusers, and the Impeachment against him was in their Names.

The matter of his charge had reference to every Englishman and all their Posterities. He was accused of designing to destroy the security of every of their Estates, Liberties and Lives, and to reduce them all to be subject to meer Will and Pleasure.

* * * * *

For this purpose I expose to the common view the whole Proceedings of his Tryal, being the most solemn, deliberate, and every way the greatest Tryal whereof we have any account in our English story.

The Preparations for his Tryal were made with an unusual solemnity; and were the results of the Prudence of many selected Lords and Commons, as a Committee of both Houses.

The usual places for Administering Justice and Tryals of offenders were thought too mean upon so great an occasion, and therefore Scaffolds were erected in Westminster Hall, fit to receive so great an Assembly as were to attend his Tryal. His Majesty had a Closet provided for him the Queen and the Prince, near the Place where the House of Peers sate, and was every day at the Tryal of the said Earl, and might hear what was said, and see what witnesses were produced, and take a full view of the greatness of the Assembly, and yet remain privately in his Closet unseen. Seats were prepared for the Lord High Steward, and all the House of Lords who sate as his Judges. Woolsacks were placed for all the Justices or Judges to be Assistants. There were also seats provided for all the Commons in Parliament, though they came not with their Speaker and his Mace as a House of Parliament, but as a Committee of the whole House. Seats were likewise prepared for the Commissioners of the Kingdoms of Scotland and Ireland, which made it an Assembly of three Kingdoms.

At the lower end of the Scaffolds a place was provided for thirteen Members of the House of Commons, who were appointed for the Earl's prosecutors to manage the Evidence against him; near to them stood the Prisoner with a Table before him, and a Desk to write upon, and a Chair was set for him to rest himself when he found it needful.

The Author of the ensuing Papers was purposely placed near the Earl to take in characters (*i.e.* shorthand) whatsoever should be said, either against or for him, and to the best of his skill, he did impartially put in writing what was said in the Case Pro and Con; he hath not wittingly or willingly omitted the least Particle said in the Prisoner's Defence either by himself or anybody in his behalf; he hath not varied the form or manner of his Expressions, being full of Eloquence and pleasing Rhetorick and excellently adapted to move compassion, both in his Judges, and the numerous Assembly of Auditors.

The Greatness of this Minister of State's Tryal every way answered the High Station and Employments unto which he had been advanced; and the lofty Designs he had managed and the Books of his Life

from the time of his admission in the Cabinet of his Prince's Council were exposed to the World's view, and the most profound Learning of the Laws of our Country, the sharpest Wit and the deepest wisdom of our Kingdom were employed to examine and measure what he had done. Not only by those Rules of Justice whereby all our ordinary Courts of Justice are wisely bound by our Ancestors to proceed in the Trial of Criminals, but by those Fundamental Rules and Maxims of our English Government, which that Parliament asserted to be the safeguard both of the King and the People and to be so reserved in the custody of the Supreme Legislative Power, that no Criminals, by the violation of those First Principles, which they said gave the Being to our Government, can be judged otherwise than in Parliament, the ordinary Judges being obliged by that famous Statute of the 25th of Edward III concerning Treasons to Respit Judgment in all such cases, until the matter be declared in Parliament, and Judgment there given; whether the offence whereof any shall be accused be Treason or other Felony.

This Tryal being upon an Impeachment for Treasons not specially named and declared in the Statute of the 25th Edward III occasioned more industrious and exquisite searches to be made into the most antient Records of the Kingdom than had been for some hundreds of years, and also caused the most learned of the Long Robe to tumble over their Law Books, and to apply their minds to look into the bowels of our antient Laws, and the reason of them, from whence they had their being, and doubtless the Counsel on either side brought out of their most secret Treasuries the quintessence of all their Learning and Studies; besides the weight of the Cause, every man's reputation pushed him to show his utmost skill before so grave an Assembly of such Critical and excellent Judges and Auditors.

The Reader may find in these Papers all the sweetness of Learning, Wisdom and Policy, which was the issue of the long Labours and Travels of many industrious Bees in the whole spring of their youth and vigor.

* * * * *

The language used is quaint, but well serves to show the impression left upon the mind of the writer, who it will be noticed was present during the whole of the long drawn out Proceedings.

I may here remark concerning the statement in the above Preface that “The Author was purposely placed near the Earl to take in characters (shorthand) whatsoever should be said either against or for him,” that shorthand was in vogue even in those days, as can be seen by reference to the Preface to the late Mr. Wheatley’s edition of that well known work “The Diary of Samuel Pepys,”—which Diary, consisting of five large quarto volumes covering the period from 1659 to 1669, was practically written entirely in shorthand, and extracted from the first decipherer thereof a labour of nearly three years, counting twelve to fourteen working hours per day with frequent wakeful nights—where we learn that a system of shorthand (being that used by Pepys) was published by Thomas Shelton in 1620. I would add that Pepys in his Diary makes two allusions to this Trial namely (1) on the 25th March 1664, when, in reference to a sermon by Dr. Critton, he says :—

It was the worst sermon I ever heard him make, I must confess ; and yet it was good, and in two places very bitter, advising the King to do as the Emperor Servius did, to hang up a Presbyter John (a short coat and a long gown interchangeably) in all the Courts of England. But the story of Servius was pretty, that he hanged up forty Senators before the Senate House, and then made a speech presently to the Senate in praise of his own lenity ; and then decreed that never any Senator after that time should suffer in the same manner without consent of the Senate ; which he compared to the proceeding of the Long Parliament against my Lord Strafford

and (2) on the 4th November 1667, when, regarding a conversation he had had with Sir H. Cholmly, he remarks

He tells me he do verily believe that there will come in an impeachment of High Treason against my Lord of Ormond (the then Lord Lieutenant of Ireland) ; among other things for ordering the quartering of soldiers in Ireland on free quarters ; which, it seems, is High Treason in that country, and was one of the things that lost the Lord Strafford his head, and the law is not yet repealed ; which, he says, was a mighty oversight of him not to have it repealed, which he might with ease have done, or have justified himself by an Act.

Hallam tells us, in his valuable work upon the Constitutional History of England, that the earliest instance of any Parliamentary Impeachment or of a solemn accusation of any individual by the Commons at the Bar of the Lords was that of Lord Latimer in the year 1376, and that the latest (prior to that of Sir Giles Mompesson in 1621) was in 1449. This form of Procedure, Hallam remarks, had fallen into disuse, partly from the loss of that control which the Commons had obtained under Richard II and the Lancastrian Kings, and partly from the preference the Tudor Princes had given to Bills of Attainder or of Pains and Penalties, when they wished to turn the Arm of Parliament against an obnoxious subject. At a later stage in the course of the work above referred to, Hallam points out that when King James I died in 1623, the Commons had been engaged for more than twenty years in a struggle to restore and to fortify their own and their fellow subjects' liberties, and had obtained in this period but one legislative measure of importance viz, the Declaratory Act against Monopolies, but he adds that they had rescued from disuse their ancient right of Impeachment, and had placed on record a protestation of their claim to debate all matters of public concern, and had further remonstrated against the usurped prerogatives of binding the subject by proclamation and of levying customs at the outports. Having detailed the above, Hallam proceeds to observe, that of these advantages, some were evidently incomplete, and that it would require the most vigorous exertions of future Parliaments to realise them, but that such exertions the increased energy of the nation gave abundant cause to anticipate, as a deep and lasting love of freedom had taken hold of every class except perhaps the clergy, from which, when viewed together with the rash pride of the Court and the uncertainty of Constitutional principles and precedents collected through our long and various history, a calm bystander might presage that the ensuing reign would not pass without disturbance nor perhaps end without confusion.

Such then was the vista at the dawn of the reign of Charles I, wherein came the happenings that led to the trial with which I am dealing—happenings which of a truth entitled Rushworth to his ‘Apologia’, wherein he might well have written “*quaeque ipse miserrima vidi et quorum pars magna fui.*”

The stormy prospect to which Hallam alludes was, as he himself fully recognises, in a large extent due to the overbearing tyranny exercised by the Court party and their supporters (who in those days in effect constituted the Government) under the guise of Law through the Star Chamber. This Court owed its existence to the greed and parsimony of Henry VII, who, not content with despoiling our ancestors through such wretched instruments as Empson and Dudley, also contrived to inflict upon them a jurisdiction foreign to all the principles of English Justice and opposed to all honest dictates of human nature. Born thus in ignominy, little but injustice could be expected as the fruit of this excrescence of the English Crown. In the result Realisation more than warranted Anticipation, for, not only were the King’s subjects beggared of their rights in having to submit to the jurisdiction of this bastard Court, but they had in addition to suffer for its wanton disregard of one of the main principles of the Great Charter, to wit, that no man be amerced to the full extent of his means—indeed Hallam informs us that the Councillors of the Star Chamber inflicted such fines as no Court of Justice, even in the present reduced value of money, would think of imposing. We learn from him that the Star Chamber had taken cognisance of both Civil suits and of offences throughout the time of the Tudor Sovereigns, but it would appear from his description that the Lawyers of those times had always protested against its usurpation of Jurisdiction, and in fact were rebuked therefor. To such lengths moreover did the Members of the Chamber proceed in this direction, that upon the trial (save the Name!) of Prynne a barrister of Lincoln’s Inn for his inditing of the bulky volume (which was in quarto and ran to a

thousand pages) called “*Histriomastix*”, whereof the professed purpose was to decry stage plays and the like (and which Hallam observes was supported by a profusion of learning), the Court refused to receive his plea until it had been signed by Counsel, *and none could be found to sign it*. In passing I may remark that, to the latter day mind, the author’s display of a profusion of learning referred to by Hallam might be more aptly described as savouring of a sarcastic wit—part of such display being the assertion that ‘ plays sold better than the choicest sermons ’! As a consequence of his so called trial, the sentence upon Prynne was that the book be burnt by the Common Hangman; that he be put from the Bar and excluded from the society of Lincoln’s Inn; and that he be degraded by the University of Oxford; that he should stand in the Pillory at Westminster, and at Cheapside, and lose an ear at each place; that he should stand with a paper on his head declaring his offence to be the publishing of an infamous libel against both their Majesties and the Government; and that he be branded in the forehead; and that a fine of Five thousand pounds be set on him and perpetual imprisonment. Even this however did not deter him from utilising his confinement in the production of further literary efforts, and, as a sequence, he was again presented to the Chamber, the members whereof, having examined the marks of his mutilation, expressed resentment at the fact that his ears had not been closer cropped, and then proceeded to condemn him to lose the remainder of them in the pillory, and thence to be taken to a more distant gaol than that wherein he had been previously confined.

Other instances of the severity of the Chamber’s sentences may be given; thus one Morley was fined Ten thousand pounds for striking in the Court at Whitehall one of the King’s servants; while Sir George Markham was fined a like sum for language used to Lord Darcy’s huntsman, wherein Sir George (whom the huntsman had abused with foul words for following hounds more closely than the

huntsman thought proper, and which Sir George had resented with a stroke of his whip) had intimated that if Lord Darcy were to attempt to justify his huntsman's insolence, he would be treated in the same manner. As another instance may be mentioned what happened to one Osbaldistone, a Schoolmaster, who had, in the course of some letters addressed to Williams Bishop of Lincoln, made allusion to "*a little great man*", and had in another passage designated the same person as "*a little urchin*"—whereupon, on discovery of the letters, the matter was moved before the Chamber, which by various inferences and constructions, held that the epithets applied to Laud (then Archbishop of Canterbury and President of the Chamber), and condemned Osbaldistone to pay a fine of Five thousand pounds and to have his ears nailed to the pillory before his own school, while the unfortunate Bishop Williams (who had just previously been fined ten thousand pounds by the Chamber) was mulcted in a further fine of Eight thousand pounds *for failing to discover the correspondence to the Chamber*: Osbaldistone fled the country, leaving a note behind him to explain "that he was gone beyond Canterbury"! Yet further instances may be adduced; thus on one Mr. Fuller (a bencher of Grays Inn) moving for a "habeas corpus" on behalf of two Puritans on the ground that their imprisonment by the Chamber was illegal, he himself was committed to prison and lay there to the day of his death—all applications for his discharge being constantly opposed. Again, Whitlock (to whom more extended reference will later be made) was hailed before this voracious tribunal as having given a private opinion to a client that a certain commission issued by the Crown was illegal. Selden also had to bend the knee to the Chamber for aspersing the High Church party's claim to divine right. Sir David Forbes, for words used against the Earl of Strafford, had to disburse £5,000 to the King and another £3,000 to the Chamber; while one Leighton a Scottish divine, who had published a severe outcry against the hierarchy, was deemed to have met his deserts only by being publicly whipped at Westminster,

set in the pillory there, and then undergoing the further pains and penalties of having one side of his nose slit, one ear cut off, one side of his cheek branded with a hot iron, with a repetition of these vindictive conceptions in the following week at Cheapside—the sequel to the whole being perpetual imprisonment in the Fleet prison.

Some of the incidents which are related respecting the Chamber are not without subtle humour, for some young gentlemen of Lincoln's Inn (who in a state of inebriety had "drunk confusion to the Archbishop") having been cited to appear before the Chamber, and having applied to the Earl of Dorset for protection, received advice on this wise; "who bears witness against you?" They replied to the effect that evidence would be given by one of the drawers of the wine—whereupon the Earl enquired as to the position in which the drawer had been standing when the health was supposed to have been drunk, and received for answer that the drawer had been at the door, going out of the room. "Tush" answered the Earl, "the drawer was mistaken; you drank confusion to the Archbishop of Canterbury's *enemies, and the fellow was gone before you pronounced the last word.*" The hint sufficed, and the young gentlemen escaped with reproof and admonition; In another case a waterman in the service of some nobleman, in a dispute with a citizen concerning his fare, produced his badge containing the crest of his master which happened to be a swan, and argued that he was by virtue thereof entitled to better treatment than he had received. The citizen, however, being by no means similarly impressed, replied "that he did not trouble his head about that goose," *for which offence* he was heavily fined as having opprobriously defamed the nobleman's crest by calling the swan a goose, and was in consequence reduced to beggary.

As Hallam observes, little objection seems to lie in a free country, and with a well regulated administration of justice, against

the imposition of weighty penalties, due consideration being had of the offence and the criminal, but adjudged by such a tribunal as the Star Chamber, where those who inflicted the punishment reaped the gain (for it is affirmed by Lord Clarendon in his *History of the Great Rebellion* that of two hundred thousand pounds levied on the people scarcely fifteen hundred came into the King's coffers) and sat like famished birds of prey with keen eyes and beaded talons eager to supply for a moment by some wretch's ruin, the craving emptiness of the exchequer, this scheme of enormous penalties became more dangerous and subversive of justice, though not more odious than corporal punishment.

Small wonder was it, therefore, that those who could, betook themselves in hundreds to America—there to found a government which would be more tolerant, and respect that liberty which they were so rigorously denied in their native land.

The late Professor Dicey, in his *Essay on the Privy Council*, deals at considerable length with the origin, usurpation of jurisdiction, and iniquitous methods of the Star Chamber, and shows how it was a necessary adjunct to the Tudor system of government, but he does not fail to emphasise that such system ought to have expired with the last of the Tudors.

He adds that from the moment when James I ascended the throne, a revolution of one kind or another was inevitable, and though he remarks that the Stuarts might have ruled with more skill, and might also have been the leaders of reform instead of becoming the victims of a revolution, he fully recognises that no policy on their part could have long averted some alteration in the form of government.

He describes the Star Chamber as an institution at once powerful, hateful, and full of interest, and as one which, if its influence was less extended than the sway of the Inquisition, and if

its deeds lacked the bloody atrocity of the Revolutionary Courts, combined a system of secrecy in its acts which a Dominican might have admired, with a power of duration which might have inspired the authors of the Parisian tribunals with hopeless envy—pointing out that it held sway during one hundred and fifty years, and that its power penetrated into every branch of English life, as, since no rank was exalted enough to defy its attacks, and no insignificance sufficiently obscure to escape its notice, it terrified the men who had worsted the Armada, and overshadowed the dignity of the judicial bench, summoning before its tribunal the Prynnes and the Cromwells, who at last proved its destroyers.

He further tells us that it was not the dignity of its Judges, which imparted to the Star Chamber its terrors, but rather its manner of procedure, which he says consisted of two modes—the most summary being that “*ore tenus*”, whereby on the reception of a charge, grounded on common report or on secret information, the accused was privately arrested and brought before the Council Board, where he was examined, with the result that, if he confessed or made admissions equivalent thereto, he was condemned “*ex ore suo*” (out of his own mouth) and judgment was given against him—*he being entirely ignorant both of his accuser and of the crime laid to his charge*; while, if he refused to confess or answer questions, he was remanded to prison, in order that the Council might adopt the second mode of procedure namely that by bill, which consisted of a bill of complaint addressed to the Council, signed by a Councillor, upon which the accused was summoned by a Writ of Subpoena, whereon he was bound to answer the bill on oath, and in default was committed to prison—in which latter event, after some delay, his crime was treated as acknowledged; whereas, if he put in an answer, his case was not much better, as he was examined by the complainant on written interrogatories, which if he refused to answer, led to imprisonment of indefinite and sometimes life long duration. If however the accused were fortunate enough to escape

the Scylla and Charybdis above indicated, the complainant's examination was proceeded with, and the latter's witnesses, *whose character we are told the accused was not allowed to shake*, were examined *in private*—the cause being *then* deemed ready for determination, with the result that sentence was given, after probably a long delay.

Professor Dicey further informs us that the punishments which followed the sentences were of the most arbitrary character—death being the only penalty which the Court dared not enforce—and that Fines, Whipping, the Stocks, the Pillory, Scourging and Branding were among the number, and that at times a penalty greater than any law warranted was inflicted, and further that, since mere caprice could either lighten or aggravate the punishment, a quiet submission was the best road to the Council's favour. He adds that sometimes the crime itself suggested an appropriate recompense, and instances the case of a man who objected on religious grounds to eat swine's flesh being imprisoned and fed on no meat but pork. In this relation, Hallam remarks that a tribunal so vigilant and severe, proceeding by modes of interrogatory unknown to the common law, and possessing a discretionary power of fine and imprisonment, was easily able to quell any private opposition or contumacy. He further points out that, though the jurisdiction actually exerted by this Court could not be indicated according to Statute Law, it had been so well established as to pass without many *audible* murmers.

Among other accusations, to which Professor Dicey tells us the Council lent a ready ear, were those of Treason and Sedition, as to which he remarks that modern notions of those terms give but a feeble conception of the meaning attached thereto in those days, as not acts alone, but slight expressions aroused the government's vigilance—a Mr. Swynerton of Swyneshead being brought before the Council for exclaiming "O, Jesus, what a world is this, that so

many men should die for one man's sake ;" while Sir Thomas Cheney a Councillor, Warden of the Cinque Ports and Treasurer of the King's Council was examined by his fellow Councillors on a charge of Treason at the accusation of his own son, in which instance, though the accusation failed, the Council ("arbitrary," as Dicey says, "in its very justice") committed the son to the Tower "*for an example.*"

Dicey also shows us the vigilance exercised by the Star Chamber in regard to the press, which he demonstrates amounted to a regular censorship, a proclamation being issued which prohibited the publication of anything *which had not passed under the inspection of the Bishops.*

After naming various other abuses of this Court, Dicey cites one as standing preeminent, namely the means at its disposal of influencing the law courts, concerning which he says that in some instances the King transferred to the Chamber cases on which the Courts were about to pronounce a decision, and supplements this information by remarking that, when this was done, it wanted but one more step for the King, as the phrase went, "to take the matter into his own hands", and, if he chose, pardon the offence, *generally after the receipt of a large sum of money.* He further points out that even if a pardon were not obtained, it was at times an advantage to be tried in the King's own Court, since a murderer, if put on trial in the Star Chamber, (as it was not in the Council's competence to inflict death) was sure to escape with a less penalty than that which the law assigned.

He also makes reference to the Chamber's habit of weighing down the freedom of the Courts by summoning Juries before it *to account for their verdict*, and shows that though they were at liberty to give a true verdict according to the evidence, *it was well for them if their view of truth coincided with that of the government*, as otherwise they were liable to be taught their duties by a Summons before the Chamber, with the sequence of fine and imprisonment.

Hallam reminds us that there is no room for wonder at any verdict that could be returned by a jury, when we consider what means the Government had of securing it,—as to which he states that the Sheriff returned a panel either according to express directions, or to what he judged himself the Crown's intention and interest—and that if a verdict had gone against the prosecution in a matter of moment, the jurors must have laid their account with appearing before the Star Chamber; lucky if they should escape, on humble retraction, with sharp words instead of enormous fines and indefinite imprisonment. He adds that the control of this arbitrary tribunal bound down and rendered impotent all minor jurisdictions; and that that *primaeval* institution, those inquests by twelve true men, the unadulterated voice of the people, responsible alone to God and their conscience, which should have been heard in the Sanctuaries of justice, as fountains springing fresh from the lap of earth, became, like waters constrained in their course by art, stagnant and impure; and concludes this scathing condemnation by remarking that until this weight that hung upon the constitution should be taken off, there was literally no prospect of enjoying with security those civil privileges which that constitution held forth.

In this connection, I would refer to what happened at the trial of Sir Nicholas Throckmorton in 1554 for High Treason, whereat, after the prisoner had pleaded “not guilty,” he was asked how he would be tried, to which he intimated that he desired to be tried “by faithful and just men,” whereupon the Jury were called, of whom two were peremptorily challenged by the Crown without shewing cause therefor, despite the accused's protest. Those of the Jurors who were permitted to serve, however, proved to be “faithful and just men,” for through their Foreman (one Whetstone — *a suitable name!*) they, after considering their verdict, stated to the Court

We have thoroughly considered the evidence, and the Prisoner's Defence, and have found him 'not guilty,' agreeable to our consciences, with the result that (as my report of the trial avers)

Mr. Attorney General moved the Court that the Jury might give £500 (at least £3,000 in present value) apiece security for having brought in such a verdict !!!

But most monstrous of all the Star Chamber's enormities was that whereby, as Dicey indicates, the Chamber *gave aid to the Law Courts* by the infliction of torture in cases referred to it, and he informs us that various royal orders testify to the readiness with which Royalty ordered the employment of the rack, adding that a more indelible proof of its use is to be found on the Stones of a dungeon in the Tower where those who care may still read how

Thomas Miagh which lieth here alone
That fayne wolde from hens begon
By torture strange my trouth was tryed
Yet of my libertie denied.

Dicey further shows us that even the great Cromwell himself (though not then so great as he subsequently became) was not exempt from the tender mercies of the Chamber—he being formally sent for by warrant, and detained in the custody of the Chamber's messenger, pending an Order for dismissal, in connection with a dispute in 1630 concerning the remodelling of Huntingdon.

It was under circumstances such as the foregoing, that the House of Commons entered upon its long waged struggle with the King and his supporters. In the earlier stages of that struggle Sir John Eliot stands forth as the great leader of the Commons, and it was undoubtedly owing to the immense efforts and sacrifices made by him that the King's assent to the Petition of Right was procured.

The effect of that Act was to secure a specific Declaration that as a consequence of the Great Charter, and by the tenor of the ancient customs and laws of the realm, every subject has a fundamental property in his goods, and a fundamental liberty of his person; that in all common cases the Common Law ought to be the standard of proceedings; and that in case for the security of his person, the general safety of his people, or the peaceable government of the Kingdom, the King should find just cause for reasons of state to imprison or restrain any man's person, he should, within a convenient time, express the cause of the commitment or restraint, either general or special, and, upon a cause so expressed, should leave the prisoner immediately to be tried according to the Common Law of the land.

This Act was the direct consequence of the attitude of King Charles upon the Impeachment of the Duke of Buckingham by the Commons. The Duke was impeached upon eight articles, but the impeachment never came to a full determination, and the immediate result of it was that two of the Managers of the proceedings on behalf of the Commons, namely Sir John Eliot and Sir Dudley Digges, were committed to the Tower, whence however they were speedily released, as the Commons refused to transact further business while the breach of privilege involved in their detention continued.

Following upon this, the King (who had previously dissolved his First Parliament for the express purpose of avoiding any Impeachment of Buckingham) proceeded to dissolve his second Parliament, which had so flagrantly disregarded his wishes in impeaching the Duke. This led in due course to the summoning of the Third Parliament, which promptly assumed the attitude of its predecessors, and was successful in obtaining the King's assent to the Petition of Right as already explained.

This success, however, was not obtained until the King found that all his schemes for enforcing arbitrary taxation upon his subjects

by devious means such as in the guise of Loans and Benevolences—though acquiesced in by complacent Judges in derogation of all the Statutes designed for the protection of the liberty of the subject—were, so far as immediate benefit was concerned, of little or no avail.

During the course of the troubles which fell upon the land by reason of this unconstitutional attitude on the part of the King, the Northern Counties in a mass set the Crown at defiance. The North had always been turbulent throughout the reign of the Tudors, and it was with a view to setting up a deterrent that the Council of York—which Hallam designates the Council of the North—was created. This Court originally acted as a Criminal Court—possessing, as Hallam remarks, criminal jurisdiction in Yorkshire and the four more Northern Counties as to riots, conspiracies and acts of violence, though it had, as he points out, by its original Commission a jurisdiction in civil suits where the parties were too poor to bear the expense of a process at Common Law, in which case it had power to determine in a summary manner and according to equity.

Notwithstanding this, first James I and then Charles I extended its powers, and conferred upon it a greatly enlarged civil Jurisdiction with wide discretionary powers. It will thus be seen that the scheme of the Stuarts was to overawe the people by means of the Council of York on the one hand and the Star Chamber on the other—using the decrees of these Courts as a mask to cover their various delinquencies.

Even Hume (who has a strong tendency to gloss over many of the illegal acts of Charles I on the ground of dubiety of precedent) has to admit that—though (as he says) it was not improbable that the King's intention was only to prevent inconveniences which arose from the bringing of every cause from the most distant parts of the Kingdom into Westminster Hall—the consequence was that

all the Northern Counties were put out of the protection of ordinary law and subjected to an authority somewhat arbitrary.

We must now examine a little into the character and history of the unfortunate Earl whose conduct formed the subject of the great Trial with which I am about to deal. Though he is better known under the title which was conferred upon him about a year before the Trial, viz., Earl of Strafford, he first acquired fame as Sir Thomas Wentworth.

He was a great Yorkshire landowner, descended from the senior line of a very ancient and powerful family, being the eldest son of Sir William Wentworth of Wentworth Woodhouse in Yorkshire, and was born on the 13th April, 1593—those who are inclined to superstition will observe that the date of his birth bore that figure of ill omen “13”. His education was completed at St. John’s College, Cambridge, after which he spent two years in France. On his father’s death he inherited an estate of the annual value of £6,000, and at the age of 22 was appointed to the office of “Custos Rotulorum” for Yorkshire in succession to his rival in the County, Sir John Savile. Later, viz, in 1621, and again in 1625, he was chosen to represent the County of York in Parliament, but was subsequently disqualified from taking his seat by having the appointment of High Sheriff of Yorkshire placed in his hands—as some say, for the express purpose of such disqualification; to which colour is lent by the fact that almost immediately after his appointment he was dismissed from the office of High Sheriff.

Rushworth’s description of him is as follows:—

This noble Earl was in person of a tall stature, something inclining to stooping in his shoulders, his hair black and thick, which he wore short; his countenance of a good well composed symmetry and good features, only in his forehead he expressed more severity than affability, yet a very courteous person.

He had been originally attracted to the King's party, but feeling slighted by his dismissal from office as Sheriff of Yorkshire, he joined the opposite side, and became one of the most vigorous opponents of the Court.

Green in his well-known "Short History of the English People" tells us that Buckingham—who was then all powerful at Court—instinctively dreaded the genius of Strafford and resolved to crush him by a signal insult, and that it was in consequence that Strafford (then Sir Thomas Wentworth), while sitting in his Court as Sheriff of Yorkshire, received the announcement of his dismissal from office, and of the gift of the post to Sir John Savile his rival in the County.

The effect upon Strafford was electrical. He sprang to the front of the opposition to the wishes of the King and Buckingham, and we find him using these words in the House :—

We must vindicate our ancient liberties. We must reinforce the Laws made by our ancestors. We must set such a stamp upon them, as no licentious spirit shall dare hereafter to invade them

and in concluding one of his speeches on the Petition of Right he said :—

If he did not faithfully insist for the common Liberty of the subject to be preserved whole and entire, it was his desire that he might be set as a beacon on a hill for all men to wonder at.

Buckingham's conduct towards him undoubtedly aroused in him a keen desire for retaliation, as was shown by the speech, which his ready wit enabled him to deliver to his co-magistrates (at the very sitting at which he received his dismissal from the office of High Sheriff) in these words "Since they will thus weakly breathe on me a seeming disgrace in the public face of my country, I shall crave leave to wipe it away as openly as easily." The

keenness of his attitude while in opposition to the Court party is especially demonstrated by the fact that he refused to pay the amount charged on him by a loan levied by the King without the authority of Parliament, and in consequence suffered first imprisonment in the Marshalsea, and then restriction in his movements to a space not exceeding two miles from the town of Dartford in Kent. Subsequent to his release he was again elected to serve in Parliament as the representative for the County of York, and crowned his efforts on behalf of the popular party by being very largely instrumental in securing the passing of and subsequent assent of the King to the Petition of Right. But, this accomplished, he suddenly abandoned his party and tendered his services to the King, who warmly welcomed the assistance of so able a zealot, and promptly created him Baron Wentworth Newmarsh and Oversley. This was on the 22nd July, 1628, shortly after which, on meeting his old friend Pym (who subsequently became the leader of the Commons) he remarked, "You see I have left you", to which Pym's reply was "So I perceive, but we shall never leave *you* as long as you have a head on your shoulders"—and as we shall presently see Pym kept his word, so that Strafford who (as already noted) had expressed a desire that, in case of any backsliding on his part concerning the preservation of the liberty of the subject "he might be set as a beacon on a hill for all men to wonder at", was in fact made such a beacon by Pym who had uttered to him the above warning.

In the course of his 'Apologia' referred to at the outset of this narrative, Rushworth remarks :—

This Great Man's principal crime objected against him by the Parliament, was his attempt to subvert that excellent Law called the Petition of Right, which he himself (especially in a speech made by him in Parliament on the 22nd March, 1628) had promoted and pressed with the most ardent zeal, as the best inheritance he could leave his posterity; and all the laws confirmed and renewed in that Petition of

Right were said to be the most invenomed arrows that gave him his mortal wound; but how justly these were urged against him it is not my part to determine.

Hallam, in treating of Strafford's position at the stage of the King's assent to the Petition of Right, observes that the hour of his glory was when Charles assented to the Petition of Right, in obtaining which and in overcoming the King's chicane and the hesitation of the Lords, he adds, Strafford had been pre-eminently conspicuous, but he then proceeds to inform his readers that from that moment Strafford started aside from the path of true honour, and being suddenly elevated to the peerage and a great post (the presidency of the Council of the North) commenced a splendid but baleful career that terminated at the scaffold, and further, that after this fatal apostasy Strafford not only lost all solicitude about those liberties which the Petition of Right had been designed to secure, but became their deadliest and most shameless enemy.

Green remarks that Charles had good ground for confidence in his new minister, as in Strafford the very genius of tyranny was embodied, and that if he shared his master's belief that the arbitrary power which the latter was wielding formed part of the old constitution of the country, and that the Commons had gone out of their ancient bounds in limiting the royal prerogative, he was clear sighted enough to see that the only way of establishing absolute rule in England was not by reasoning or by the force of custom, but by the force of fear.

In the meantime Strafford—like a beggar set on horseback—proceeded to ride to the devil. He procured a Commission conferring upon the Council of the North a far greater jurisdiction than it had ever yet exercised—for not only were its territorial limits extended and made applicable from the Humber to the Scottish frontier, but in addition it was authorised to take cognisance of a greatly extended list of offences and causes, *and*

was enjoined to proceed therein in accordance with the practice and usage of the Star Chamber, and that, whether the offences were provided for by Act of Parliament or not. There were further conferred upon this Court the very important rights of staying proceedings at Common Law by injunction and attaching persons (by its Sergeant) in any portion of the Kingdom.

This, of course, could not fail to furnish Strafford with a most arbitrary weapon both of offence and defence, since it readily enabled him on the one hand to oppress, and on the other to intimidate, nor was he loath to do either.

Green remarks of him that his system was the expression of his own inner temper, and that the dark gloomy countenance and full heavy eye which are met in Strafford's portrait are the best commentary on his policy.

In 1633—so well had his schemes succeeded thus far—Strafford was made Lord Lieutenant of Ireland, but he still retained the presidency of the Northern Council.

In Ireland, Strafford proceeded to such lengths in his abuse of power as to transcend even those excesses whereof he had been guilty in the North of England. From the very nature of the circumstances then existing in Ireland, he found ample scope for indulgence of his bent of mind. He imprisoned the Lord Chancellor Loftus for disobedience to a decree, which, though made by the Privy Council, was undoubtedly so made at his (Strafford's) own instance, and which (apart from this and other objections) could not possibly be defended, since it entirely concerned the private affairs of the Lord Chancellor's son in regard to the latter's marriage with a lady with whom there would appear to have been well founded suspicions that Strafford himself was unduly intimate. On his instigation, a Council of War was summoned which passed sentence

of death upon Lord Mountnorris for nothing more than an expression of appreciation of the act of a valet in Strafford's service, who in moving a stool had sorely hurt his master's foot, who was at that time afflicted with the gout. Justice however demands that it be admitted that in some respects Strafford did much to improve the general condition of things in Ireland, and that, if he himself acted as a despot, he at least repressed a multitude of others who had previously flourished. Moreover, he compelled many, who had in former times set the law at nought, to alter their attitude, but, in spite of all this, he created far more evils than he conferred benefits upon the country, which groaned under his terrible rule. He encouraged the existence of factions, since these lent aid to his plans in that they worked for the production of the general weakness and disunity which he desired so as to enable him to enforce his imperious will. His so called Irish Parliament was a mockery under any circumstances, and the more so for those which existed as above.

In all this Strafford was very largely aided and abetted by the Primate Laud—who, as has been already mentioned, was the President of the execrable Star Chamber.

Between them they engineered a scheme for the better government of the Realm, which they termed "Thorough." Some writers have called it Strafford's scheme, but it is obvious from the correspondence which passed between them, that the scheme was the product of the brains of both Strafford and Laud. The only beneficial effect that it can be said to have had on the Realm, was that it undoubtedly led to a more speedy reckoning on the part of the unfortunates for whose welfare it was intended with the pair who "fathered" it upon them.

The intimacy which existed between Strafford and Laud may be gathered from the following excerpts from letters which passed between them—thus Laud to Strafford.

For the State indeed my Lord I am for 'Thorough'; for I see that both thick and thin stay somebody, where I conceive it should not, and it is impossible to go thorough alone.

I am very glad to read your lordship so resolute, and more to hear you affirm that the footing of them that go thorough upon our master's service is not upon fee as it hath been.

You have a great due of honour here for your proceedings; go on in God's name

And so Strafford in reply:—

I know no reason but you may as well rule the common lawyers in England as I, poor beagle, do here; and yet that I do and will do in all that concerns my master at the peril of my head. I am confident that the King, being pleased to set himself in the business, is able by his wisdom and ministers to carry any just and honourable action through all imaginary opposition, for real there can be none; that to start aside for such panic fears, fantastic apparitions, as a Prynne, or an Eliot shall set up, were the meanest folly in the whole world; that the debts of the Crown being taken off, you may govern as you please; and most resolute I am that the work may be done without borrowing any help forth of the King's lodgings, and that it is as downright a precaution *ex te Israel* as ever was, if all this be not effected with speed and ease.

In another letter, in support of his desire to obtain the right of determining civil suits, Strafford wrote:—

I know very well the common lawyers will be against it, who are wont to put such a prejudice upon all other professions as if none were to be trusted or capable to administer justice but themselves; yet how well this suits with monarchy, when they monopolise all to be governed by their year books, you in England have a costly experience; and I am sure His Majesty's absolute power is not weaker in this Kingdom (Ireland) where hitherto the deputy and council board have had a stroke with them.

Of a piece with the foregoing, and in fact as a direct consequence—though more immediately due to the legal researches of Noy one of the Law Officers of the Crown in England (who like Strafford had originally appeared on the side of the Reform party)—arose the question of “Ship Money”. Hallam, in reference to Noy’s researches, informs us that Noy was a man of venal diligence and prostituted learning, who shaking off the dust of ages from parchments in the Tower, discovered that the seaports and even maritime counties had in early times been sometimes called upon to furnish ships for the public service, and that there were in addition instances of a similar demand upon some inland places. Noy (says Hallam) died soon afterwards, but he does not dismiss him from further consideration with that remark, for he points out that it would not be right to impute to Noy the more extensive and more unprecedented scheme of Ship Money as a general tax which was afterwards carried into execution.

Vigorous protests were made on all sides, yet these but served to make the Court party the more determined to carry out their project, in which of course Laud and Strafford at once took the foremost part. Hallam shows us that the protest made on behalf of the citizens of London cost them £35,000, and that the Deputy Lieutenants of Devonshire, who prayed that certain towns situate a few miles distant from the sea might be spared from the tax, were summoned to London and severely reprimanded.

The extension of the scheme from a mere tax on seaports to a general one on the whole Kingdom would seem, according to Hallam, to have been due to Finch the Chief Justice of the Common Pleas. He, writes Hallam, was a man of little learning or respectability, a servile tool of the despotic cabal (Laud, Strafford and their satellites) who, as Speaker of the preceding Parliament had in obedience to a command from the King to adjourn, refused to put the question upon a remonstrance moved in the House. We may see therefore how

unfitted he was to sit in judgment—as he did with other judges—upon issues which, as will be presently shewn, were subsequently raised.

It was his spirited resistance to thistax, when it was sought to be levied, that was the chief means of bringing John Hampden's name to the fore then and for all time—indeed it may be remembered that Gray in his immortal “Elegy written in a Churchyard”—which Wolfe recited as he was rowed down the St. Lawrence to his hard won victory at Quebec—wrote,

Some village Hampden that with dauntless breast
The little tyrant of his fields withstood;
Some mute inglorious Milton here may rest;
Some Cromwell guiltless of his Country's blood.

Hampden's character is perhaps best described in the words of Green, who speaks of him as a friend of Eliot's, a man of consummate ability, of unequalled power of persuasion, of a keen intelligence, ripe learning, and a character singularly pure and loveable.

Hampden resolved to appeal to the protection of the Law, and the case, which was one of great magnitude, was tried in the Exchequer Chamber before a full bench of Judges, twelve in number, and lasted from first to last six months. It is curious to note that one of the Counsel who appeared for Hampden was Oliver St. John, who afterwards became Solicitor General and was one of the most vituperative of Strafford's opponents at his trial. Hallam remarks that, so far as related to Mr. Hampden, the precise question was “whether the King had a right on his own allegation of public danger to require an inland county to furnish ships or a prescribed sum of money by way of commutation for the defence of the Kingdom?”

Various weighty arguments were advanced by St. John and Holbourne, who appeared with him, to show that the Tax was

illegal, and not the least potent of these was their reliance upon the Petition of Right—which Hallam describes as “that noble legacy of a slaughtered Parliament, reciting and confirming what the ancient statutes had established that no man thereafter be compelled to make or yield any gift, loan, benevolence, tax or such like charge without common consent by Act of Parliament,” and adds that this latest and most complete recognition must sweep away all contrary precedent, and could not, without a glaring violation of its obvious meaning, be stretched into an admission of Ship Money.

The majority of the Judges would however have none of this, and, placing the King above Parliament in all respects, gave Judgment against Hampden upon the broad principle that no statute prohibiting arbitrary taxation could be pleaded against the King’s will.

In these prosaic days, the opinions of the Judges who gave the verdict to the Crown sound somewhat startling. Thus Mr. Justice Berkeley :—

Where supposed a fundamental policy in the creation of the frame of this Kingdom, that in case the Monarch of England should be inclined to exact from his subjects at his pleasure, he should be restrained for that he could have nothing from them but upon a common consent in Parliament, he is utterly mistaken. The law knows no such King yoking policy. The law is itself an old and trusty servant of the King’s; it is his instrument or means which he useth to govern his people by. I never read or heard that *Lex* was *Rex*; but it is common and most true that *Rex* is *Lex*.

Again Mr. Justice Vernon said :—

The King *pro bono publico* may charge his subjects for the safety and defence of the Kingdom, notwithstanding any Act of Parliament

 and the King may dispense with any law in cases of necessity.

Finch, who I think may properly be described as the Arch Villain of the piece, gave judgment as follows :—

No act of Parliament can bar a King of his regality, as that no land should hold of him, or bar him of the allegiance of his subjects or the relative on his part, as trust and power to defend his people; therefore Acts of Parliament to take away his royal power in the defence of his Kingdom are void; they are void Acts of Parliament to bind the King not to command the subjects, their persons and goods, and I say, their money too, for no Acts of Parliament make any difference.

Of the result, Hallam remarks that those who had trusted to the faith of the Judges, were undeceived by the honest repentance of some, and looked with indignation on so prostituted a crew, since they readily appreciated that those paramount rights of monarchy to which the Judges had appealed in justification of Ship Money might serve to supersede other laws and maintain new exertions of despotic power.

Strafford (says another writer) was furious at Hampden's resistance and suggested that he should be publicly whipped. "He had great faith in a painful and humiliating punishment, and, to his mind, stripping and scourging your foe was not only an end of the argument with him, but a lesson to others who might feel inclined to take part in the controversy."

Strafford's advice was not accepted, but Hampden was only permitted to escape at the cost of his pocket.

The crisis for Strafford was now rapidly approaching. The Scots (who sympathised to the full with the difficulties encountered by the English Parliament) revolted, and Charles needed supplies to cope with their revolt. He therefore summoned what in contradistinction to its successor was called "the Short Parliament." Small satisfaction did he receive however, for the Commons would grant no subsidy until they had secured freedom of religion, property and

the liberties of Parliament. Charles offered to relinquish his claim to Ship Money, but Parliament refused to budge from the position it had taken up, and this led to its dissolution within three weeks from the commencement of its sitting.

Browning, in his Play entitled "Strafford—an historical tragedy", in the duologue between Charles I and Strafford which occurs in Act II, Scene II, makes Strafford protest against this latest dissolution thus

(Strafford.) Now, for God's sake, mind—not one error more.
We can afford no error—we draw now
Upon our last resource—this Parliament
Must help us.

(Charles.) I've undone you Strafford.

* * * * *

(Strafford.) We'll make a shift! leave me the Parliament.
They help us ne'er so little but I'll make
A vast deal out of it.

* * * * *

(Charles.) You have not heard.

(Strafford.) (What has he done?)—Heard what?
But speak at once Sire—this grows terrible.
(The King continuing silent)
You have dissolved them—I'll not leave this man.

(Charles.) 'Twas Vane—his ill judged vehemence that

(Strafford.) Vane?

(Charles.) He told them, as they were about to vote
The half, that nothing short of all the twelve
Would serve our turn, or be accepted.

(Strafford.) Vane!
Vane! and you promised me that very Vane.
O God, to have gone, quite gone from me,

The one last hope—I that despair—*my* hope,
 That I should reach his heart one day, and cure
 All bitterness, one day be proud again
 And young again, care for the sunshine too
 And never think of Eliot any more—
 God, and to toil for this, go far for this
 Yet nearer, and still nearer, reach this heart
 And find Vane there!”

Hallam in recognising that Strafford, with all his endeavours to render the King absolute, did not intend to abolish the use of Parliaments (which he says was apparently the King's aim) remarks that it must not be conceived that Strafford was a friend to the necessary and ancient privileges of those assemblies to which he owed his rise, since (as Hallam points out) Strafford looked upon a Parliament as a mere instrument of the prerogative, and was strongly against permitting any mutual understanding among its members by which they might form themselves into parties and acquire strength and confidence by previous concert.

Meanwhile (to resume the narrative) the Scots had crossed the border and occupied Newcastle, so that—Strafford's raw levies being totally unfit to oppose their further advance—Charles had to conclude a truce at Ripon. While negotiations to effect this were in progress, an address was received by the King—whose headquarters were at the time at York—from the City of London petitioning for a Parliament, while a Petition to the same purpose was presented by Lords Hertford, Bedford, Essex, Warwick, Paget, Wharton, Say, Brook, Kimbolton, Saville, Mulgrave and Bolingbroke.

Charles refused to listen at first, and essayed to find a way out of the difficulty by convening a Great Council of the Peers at York, but the latter concurred in the advice contained in the Petition presented by Lord Hertford and his co-Peers, so that the King was literally compelled to summon another Parliament.

The noise of battle in the political arena was now drawing appreciably nearer, and both parties recognised that much was required of them at this juncture. Pym and Hampden so bestirred themselves that they rode through England to awaken the electors to a sense of their duty at this the crisis of crises

Pym was a sturdy Somersetshire squire, whose strongest point was that he knew how to wait, and having waited, when and where to strike. Clarendon, who hated him, said that he was the most popular man and the most able to do hurt that has lived at any time. Green, who (while viewing Strafford as embodying the spirit of tyranny) alludes to Pym as standing out for all time as the embodiment of law, describes him as rising high above the legal antiquaries of the older constitutional school in his grasp of constitutional principles, and as being the first English statesman who discovered and applied to the political circumstances around him what may be called the constitutional proposition. He saw (writes Green) that as an element of constitutional life Parliament was of higher value than the Crown, and that in Parliament itself the one essential part was the House of Commons, for (continues Green) when Charles refused to act with the Parliament, Pym treated the refusal as a temporary abdication on the part of the Sovereign which vested the executive power in the two Houses until new arrangements were made, and, when the Lords obstructed public business, he warned them that obstruction would only force the Commons to save the Kingdom alone. Of his other qualities, Green tells us that his eloquence, though inferior in boldness and originality to that of Eliot or Wentworth, was better suited by its massive and logical force to convince and guide a great party, and adds that it was backed by a calmness of temper, a dexterity and order in the management of public business, and a practical power of shaping the course of debate, which gave a form and method to Parliamentary proceedings such as they had never had

before, coupled with which he (says Green) was the one man, of the five hundred who sat round him at St. Stephen's, who had clearly foreseen, and as clearly resolved how to meet the difficulties which lay before them.

Such a man was undoubtedly one to be reckoned with, and an opponent well worthy of Strafford's steel.

It may be of interest to record that Hume relates of Pym that, as a consequence of a proclamation issued by the King, eight ships lying in the Thames *en route* for America, and having on board Pym, Hampden, Oliver Cromwell and Sir Arthur Hazelrig, who among others had resolved to abandon for ever their native country and fly to the other extremity of the globe, were detained—regarding which Hume says “the King had afterwards full leisure to repent this exercise of his authority.”

When in the fulness of time Parliament assembled, the attendance of members was observed to be unusually numerous, and their attention to business was prompt and decisive.

Hallam refers to this period as that momentous one which no Englishman ever regards without interest, and few without prejudice, and as the period from which the factions of modern times trace their divergence, and which, he says, still calls forth the warm emotions of party spirit and affords a test of political principles.

The Commons immediately passed the Triennial Act limiting the interval between Parliaments to three years, and, having done this, secured the passage of a Bill declaring “Ship Money” illegal and annulling the Judgment of the Exchequer Chamber which had been given against Hampden

They next turned their attention to the Star Chamber, and promptly proceeded to demolish that stronghold of vice and also its companion in iniquity, the Court of the Council of York.

These things done, everything was ripe for the impeachment of Strafford, but how to bell the cat was the question? Let the story be told in Rushworth's own words in his "Introductive Account of several Passages previous to the Grand Tryal."

He writes :—

The House of Commons having in the first place according to ancient custom settled all their Grand Committees for Religion, Grievances, Courts of Justice, Trade and Privileges; it was moved that in regard the complaints of the King's subjects in Ireland were many who had undergone great oppressions in the Kingdom by Mal-Government there and came to this Parliament for relief might be referred to a Committee of the whole House for that purpose only to be appointed. This motion being made by Mr. Pym and seconded by Sir John Clotworthy avowing many of the particulars of the complaints mentioned to be true, it made a discovery to such as were well wishers to Thomas Lord Wentworth Earl of Strafford and Lord Lieutenant of Ireland that this Motion was intended by a side-wind to accumulate complaints against him, the said Lord Lieutenant, in order to an Accusation; so when the question was put, after long debate, viz, whether the Irish affairs should be referred to a Committee of the whole House? the House was divided, Sir John Clotworthy and Sir Henry Mildmay being of opinion for the Yeas were appointed Tellers of the number of the Noes: and Sir Edward Bainton and Sir Richard Luson being of opinion not to refer this business of Ireland to a Grand Committee, conceiving it without President (i.e. Precedent) were appointed Tellers of the numbers of the Yeas, and when they had told all, they came up to the Table and made this Report to Mr. Speaker, that there were with the Yeas 165 and with the Noes 152 (the majority be it marked being 13) whereupon it was resolved upon the Question, that the Irish Affairs should be referred to a Grand Committee of the whole House to meet to-morrow (Saturday, November 7th, 1640) in the afternoon at two of the Clock in the House, and afterwards every Thursday at the same hour and place. And this Committee is ordered to have the like Power as the other Grand Committees of the whole House have.

This vote being carried for a Grand Committee as to Irish Affairs, a Cabal of Friends to the Earl of Strafford sent down post unto him

into Yorkshire to acquaint him that they apprehended a design against him in the making of this Committee, and left it to his own election whether he would stay still at the Head of his army or come up to the Parliament. But if he did incline to come up, that he would at his first appearance Impeach some members of both Houses (if he had evidence for the same) of being privy to bringing the Scotch army into this Kingdom, and told him it was his wisdom to begin first and not to be first impeached as the Earl of Bristol was by the great Duke of Buckingham.

The said Earl upon the receipt of this Advertisement suddenly resolved to come up and abide the test of Parliament. But his friends then with him in the North told him, that his frank appearance would make Politicians doubt whether he did thereby assume his Judgment and wonted Prudence to go thus from his Army to the Parliament where his wisdom could not but know that the Scots and Scotizing-English had resolved his destruction, and therefore (said they unto him) it were better to keep under the safeguard of the English Army at his command (from which he had acquired some affection) or retire to the new army in Ireland then being also at his devotion, or take sanctuary in some Foreign Parts till fair weather might invite him home, neither (said they) would Discretion vote it a betraying of his innocency to decline a Trial, whereby, the means of Factions raised in England and Scotland by his malicious Prosecution and backed with power, his innocency could not protect him. They further told him that if Sentence should pass against him for Non-Appearance, yet he had kept his freedom till better times, when he might have service abroad than in Council at Whitehall. But the said Earl, conceiving he had got good evidence in the North that the Scots came in by invitation and Confederacy between the Heads of the Covenanters and some of the English Members of both Houses, and having digested such his Intelligence almost into the form of an Impeachment, he posted up with the same intending to present it to the house of Peers as soon as he arrived there.

Hallam tells us that Strafford came to London not unconscious of the danger, by his master's direct injunctions, and adds that the first days of the Session (*i.e.* of Parliament) were critical, as any

vacillation or delay in the Commons might probably have given time for some strong exertion of power to frustrate their designs.

We must now turn to the narrative of Robert Baillie, who was one of the Scots Commissioners deputed to London at the end of 1640, for it supplies what is missing from Rushworth's otherwise fully detailed relation of the course of events.

Baillie's Narrative is as follows :—

The Lieutenant of Ireland came but on Monday to town late (Monday would be the 9th November). On Tuesday (10th) rested, on Wednesday (11th November) came to Parliament, but ere night he was caged.

Intolerable pride and oppression cries to heaven for a vengeance. The Lower House (Commons) closed their doors; the Speaker kept the keys till his accusation was concluded.

To enable the sequence of events to be properly followed alternate reference must now be made to Rushworth and Baillie.

Thus Rushworth :—

But on Wednesday, November 11th, the House of Commons being acquainted by a member that there was a business of great weight to be imparted, desired the House that the Lobby without might be first cleared, and the key of the House brought up to the Table, which was done accordingly; and as the House had entered into debate about the Earl of Strafford, there came a Message from the Lords by the Lord Chief Justice Bramston and Judge Foster, that the King had commanded the Lords Commissioners who were appointed to Treat with the Scots Commissioners at Rippon, to give an Account to both Houses of Parliament of that which passed there and at York, and thereupon the Lords desire there may be a meeting by a Committee of both Houses, this afternoon in the Painted-Chamber at Three of the Clock if the occasions of this House will give leave.

At this time many Members of the House conceived this Message was now sent to get Intelligence what private debate was in hand; the

House of Commons returned this Answer by the same Messengers, That at this time they were in Agitation of very Weighty and Important Affairs and therefore they do doubt they shall not be ready to give them a meeting this Afternoon as the Lords desire, but as soon as they may, they will send an Answer by Messengers of their own.

After the Messengers were withdrawn, the House proceeded in the Debate they were in before, and appointed a Committee to prepare matter upon the said Debate for a Conference with the Lords concerning the Earl of Strafford and named seven Members, viz. :—

MR. PYM	SIR JOHN CLOTWORTHY
MR. STROUD	SIR WALTER EARLE
MR. ST. JOHN	AND
LORD DIGBY	MR. HAMPDEN

which Select Committee retired immediately into the Committee Chamber to prepare Matter of a Conference to be prayed with the Lords and a Charge against the Earl of Strafford.

The said Committee presently returned to the House and reported the Matter to them referred; whereupon it was resolved upon the Question, That a Message be sent from this House to the Lords in the Name of this House and of all the Commons of England to accuse Thomas Lord Wentworth Earl of Strafford Lord Lieutenant of Ireland of High Treason and to desire that he may be Sequestered from Parliament and be committed to Prison; and that within some convenient time this House will resort to their Lordships with particular Accusations and Articles against him.

Next we turn to Baillie and find he says :—

Thereafter Mr. Pym went up with a number at his back to the Higher House; and in a pretty short speech did, in the name of the Lower House, and in the name of the Commons of all England, accuse Thomas Earl of Strafford Lord Lieutenant of Ireland of High Treason; and required his person to be arrested till probation might be heard; so Mr. Pym and his back were removed.

Now we refer to Rushworth again :—

Mr. Pym went up with this Message to the Lords and at his Return made this Report to the House. That he had Repaired to the Lords, and there in the Name of this House and of all the Commons of England did Accuse the said Earl of Strafford of High Treason and that he had also delivered the other Particulars he had in Charge.

Their Lordships Answer was, that they do desire to take this weighty Matter into their serious Consideration, and will speedily send an Answer by Messengers of their own.

Again we refer to Baillie, who continues his narration in these terms :—

The Lords began to consult on that strange and unexpected motion.

The word goes in haste to the Lord Lieutenant where he was with the King ; with speed he comes to the House ; he calls rudely at the door. James Maxwell Keeper of the Black Rod opens ; His Lordship (Strafford) with a proud glooming countenance makes towards his place at the board head ; but at once many bid him void the house ; so he is forced in confusion to go to the door till he was called.

Rushworth's account reads :—

The Earl being required to withdraw, it was debated by the Peers whether he should be imprisoned on a general Accusation without any particular act of Treason charged against him or not. But upon the question it was carried in the Affirmative, and he, being called in, kneeled at the Bar ; and after standing up the Lord-Keeper spake to him as followeth :—

My Lord of Strafford, the House of Commons in their own Name and in the Name of the whole Commons of England, have this day Accused your Lordship to the Lords of the Higher House of Parliament of High Treason ; the Articles they will in a few days produce in the meantime they have desired of my Lords, and my Lords have accordingly resolved, That your Lordship shall be committed into safe custody to the

Gentleman Usher and be sequestered from the House till your Lordship shall clear yourself of the Accusations that shall be laid against you.

And thereupon he was immediately taken into custody by James Maxwell, Usher of the Black Rod.

To complete the thread of the Story of Strafford's arrest we must once more refer to Baillie who proceeds :—

After consultation, being called in, he stands but is commanded to kneel, and on his knees to hear the sentence. Being on his knees, he is delivered to the Keeper of the Black Rod, to be prisoner till he was cleared of those crimes the House of Commons had charged him with. He offered to speak, but was commanded to be gone without a word. In the outer room James Maxwell required him as prisoner to deliver his sword. When he had got it, he cries with a loud voice for his man to carry my Lord Lieutenant's sword. This done, he makes through a number of people towards his coach; all gazing, no man capping to him before whom that morning the greatest of England would have stood uncovered, all crying "what is the matter?" He said "A small matter I warrant you." They replied "Yes indeed High Treason is a small matter." Coming to the place where he expected his coach, it was not there; so he behoved to return that same way through a world of gazing people. When at last he had found his coach and was entering, James Maxwell told him "Your lordship is my prisoner and must go in my coach;" and so he behoved to do.

Finally Rushworth concludes the Account with the passages :—

Afterwards Mr. Pym was sent up to the Lords with a Message that some fit course be taken, that there may be free passage between England and Ireland, notwithstanding any Restraint made there to the contrary. The same day came a message from the Lords by the two Chief Justices, That the Lords have taken into serious Consideration the Accusation sent from this House against the Earl of Strafford and have sequestered him from the House and have committed him in safe custody to the Messenger of their House, and they will move His Majesty "that the passage from Ireland into England may be open notwithstanding any Restraint made there to the contrary."

Hallam's views upon what transpired as above are, that the bold suggestion of Pym to carry up to the Lords an Impeachment for High Treason against Strafford must be considered not only as a master-stroke of that policy which is fittest for revolutions, but as justifiable by the circumstances wherein they stood, and supplements this by stating that nothing short of a commitment to the Tower would have broken the spell that so many years of arbitrary dominion had been working, and that it was dissipated the instant that the people saw him in the hands of the Usher of the Black Rod, as, with his power, fell also that of his master, who from the very hour of Strafford's Impeachment never once ventured to resume the high tone of command congenial to his disposition, or to speak to the Commons but as one complaining of a superior force.

Immediately the Earl had been sequestered from Parliament and received in custody, the Commons proceeded to consider the course of procedure to be adopted in regard to his Impeachment, and took steps to acquaint themselves with all details necessary to be considered, and with this object in view appointed a Select Committee to search the Record of Attainder in the King's Bench. In addition, various Books of Entries, Petitions and other Records were sent for and examined with the most minute care by other Committees appointed for the purpose.

In the result, a series of Nine Articles of Impeachment were drawn up—the ninth reserving the right of exhibiting further Articles together with the right of replying to Lord Strafford's Answers thereto.

On the 16th January, 1641, Mr. Pym went up to the Lords with a message to this effect :—

To desire their Lordships, that those Examinations which at the Request of this House were taken in the case of the Earl of Strafford by the Lords deputed to that purpose may be delivered to the Commis-

sioners of this House appointed to draw up the Charge against the Earl, that they may make use of them for the enlarging of their Charge in particularities of Evidences according to the Clause of Resolution in the conclusion of the said charge; and likewise to make a Declaration that, howsoever by the Course of Parliament this House might proceed with the Charge in general, yet to avoid all scruples and to bring the business sooner to a conclusion they do desire to conclude in this way.

On the 30th January, 1641, says Rushworth:—

The further Impeachment of Thomas Earl of Strafford was again read, and the Title of the Impeachment and every Article and the Conclusion were every one of them particularly put to the Question, and were every of them assented unto and Resolved upon the Question; and afterwards it was resolved upon the Question that these Articles being engrossed shall be forthwith sent up to the Lords.

On the 23rd February, 1641, in regard to the question of whether Lord Strafford might have the aid of Counsel, the Lord Keeper delivered the decision of the Lords “that they would admit the Earl no further use of Council (Counsel) than the necessity of the case for his just defence required and wherein Council might with the Justice and Honour of the House be afforded him.”

The amplified Articles finally exhibited by the Commons against Strafford were 28 in number, and covered 141½ folio pages of Black Letter.

The Articles themselves, though of considerable length and couched in the high flown technical language of the time, are a model of conciseness and clarity. Subjoined is a summary of the effect of them.

1. That he (Strafford) directed and exercised an exorbitant and unlawful Power and Jurisdiction over the persons and estates of His Majesty's subjects in the Northern parts of England, and did disinherit divers of them of their inheritances and sequester their possessions, and did also fine ransom punish and imprison against the Law and in subversion thereof.

2. That at the York Assizes held on the 31st August 1631, he did declare and publish to the People and Justices then present, that some of the latter were all for Law and that nothing would please them except Law, but that they should find that the King's little finger should be heavier than the loins of the Law.
3. That, intending the Subversion of the Fundamental Laws of Ireland, he at Dublin alluded to Ireland as a conquered nation, and said that the King might do with them what he pleased, and that the Charters granted to Dublin by former Kings were nothing worth.
4. That, by speech direct and general, he did arrogate to himself a power above the Fundamental Laws and established Government, and did threaten the Earl of Cork with imprisonment in default of his discontinuing a suit instituted in the Irish Courts.
5. That he did procure sentence of death to be pronounced against Lord Mountnorris by a Council of War called by himself without any warrant or lawful authority.
6. That he did without legal proceedings cause Lord Mountnorris to be disseised and put out of possession of his freehold and inheritance of the Manor of Tymore in Armagh—he having had 18 years previous quiet possession thereof.
7. That he did put Lord Dillon a Peer of the Irish realm out of possession of divers lands and tenements in the County of Mayo and Roscommon without due legal process.
8. That he did unlawfully imprison Viscount Loftus then Lord Chancellor of Ireland, and by threats of imprisonment did terrify and disseise others of their lawful property.
9. That, assuming to himself a power above and against Law, he did, by a general Warrant under his hand, give power to the Lord Bishop of Down and his Chancellor and their several officers to attach and arrest those of the poorer class who, after citation, should either refuse to appear, or appearing should omit or refuse to perform the decrees given against them

10. That he procured the Customs of the Merchandise exported from and imported into Ireland to be farmed to his own use.
11. That for his own gain, he restrained the export from Ireland of certain commodities to wit Pipe-Staves, and then raised large sums of money for licenses for the export thereof.
12. That by a prohibition imposed by himself, without due warrant, against the importation of Tobacco into Ireland he did contrive to unlawfully obtain a monopoly in that commodity which he utilised for his own gain.
13. That by divers unlawful means he "Cornered" the Flax market in Ireland to the great detriment of the people thereof.
14. That he did by unlawful means unduly hamper the shipping trade to Ireland.
15. That in Ireland he levied unauthorised taxes by force of arms and imposed imprisonment in default of payment, and further on given occasions did unlawfully quarter soldiers on the Irish people, and did by such means expel divers of them from their homes, and did consequently levy war in that realm against the King and his liege people.
16. That, under cover of authority from the King, he prohibited all applications for redress in England in respect of acts of injustice in Ireland until suit had been first made to himself.
17. That, having as previously alleged, subverted the Government and Laws of Ireland, he did declare that the King was so well pleased with the Irish army and the consequences thereof, that he would certainly make the same a pattern for all his three Kingdoms.
18. That, for unlawful purposes, he did endeavour to draw dependency upon himself of the Papists in the Kingdoms of England and Ireland—particularly in regard to the respective armies of those Kingdoms.
19. That he imposed unlawful fines upon and (in default of payment) unlawfully imprisoned divers Scottish subjects resident in Ireland.

20. That he used his utmost endeavours to procure the King to make war upon the Scots.
21. That he deliberately counselled the King to utilise Parliament in aid of the object he had in view in regard to the Scots, and did further urge that in default of the King obtaining supplies from Parliament, he should raise money by force from his English subjects, and promised that if this were done he would use his utmost endeavours in support.
22. That he raised an army of 8,000 foot and 1,000 horse in Ireland, and did conspire with Sir George Ratcliff to employ such army for the ruin and destruction of the Kingdom of England and of His Majesty's subjects and for altering and subverting the fundamental Laws and established Government of this Kingdom.
23. That, while the previous Parliament was sitting and considering the question of supplies, and before the Resolution thereon had been made, the Earl, with the assistance of the Archbishop of Canterbury (Laud), procured the dissolution of such Parliament, and did traiterously falsely and maliciously endeavour to incense His Majesty against his subjects who had been Members of the House of Commons by telling His Majesty that they had withheld supplies, and that he did afterwards traiterously and wickedly counsel and advise His Majesty that, having tried the affections of his People, he was absolved from all rules of Government and that he had an army in Ireland which he might employ against the Kingdom of England.
24. That in the month of May 1640, he traiterously and maliciously declared before others of His Majesty's Privy Council that the Parliament of England had forsaken the King and that in denying supplies to the King, they had given him advantage to supply himself by other means as the King should deem fit, and that he (the King) should not allow himself to be mastered by the frowardness and undutifulness of the people; and that, having thus maliciously slandered the late House of Commons, he did, with the help and advice of Laud Archbishop of Canterbury and Finch late Lord Keeper of the Great Seal of England, cause to be printed

and published in the King's name a false and scandalous book entitled " His Majesty's Declaration of the Causes that moved him to dissolve the last Parliament " full of bitter and malicious invectives and false and scandalous expressions against the late House of Commons.

25. That not long after the Dissolution of the previous Parliament, he did advise the King to go on vigorously levying Ship Money, and did threaten several Sheriffs of various Counties with process to be instituted in the Star Chamber, and in fact did cause them to be so proceeded against, and did also cause the Lord Mayor Sheriffs and Aldermen of the City of London to be sent for to give an account of their proceedings in raising Ship Money, and, upon their refusal to certify such inhabitants of the City of London as were fit to lend, did urge that they deserved to be put to Fine and Ransom, and that no good would be done with them till an example were made of them and they were laid by the heels and some of the Aldermen hanged up.
26. That he did cause £130,000 then in the Mint and belonging to divers Merchants, Strangers and others to be seized and stayed to His Majesty's use, and did attempt to justify the same by abuse of the said Merchants, and by an allegation that it was the course of other Princes to make use of such monies to serve their occasions, and by citing the example of the French King in sending Commissaries of Horse with commission to search into men's estates and to peruse their accounts and levy of them by force.
27. That at York he did, without warrant, levy a Tax on the inhabitants for the maintenance of the soldiers of the Trained Bands of that County, and did threaten to commit those who refused payment.
28. That he failed to provide for the proper defence of the town of Newcastle, and suffered the same to be lost so that he might incense the English against the Scots; and that for the same wicked purpose he sought to embroil the Kingdoms of England and Scotland in war, and also endeavoured to betray the English army to certain defeat and loss.

At the conclusion of these Articles, a culminating charge against Strafford was laid in the following words

All and every which words, counsels and actions of the said Earl of Strafford were spoken, given, and done by him the said Earl of Strafford traiterously, and contrary to his allegiance to our Sovereign Lord the King, and with an intention and endeavour to alienate and withdraw the hearts and affections of the King's Liege-people of all his realms from His Majesty, and to set division between them, and to ruin and destroy His Majesty : and his said Kingdoms ; for which they do further impeach him the said Thomas Earl of Strafford of High Treason against our Sovereign Lord the King, his Crown and Dignity. And he the said Earl of Strafford was Lord Deputy of Ireland, or Lord Lieutenant of Ireland, and Lieutenant General of the Army there under His Most Excellent Majesty, and a Sworn Privy Councillor to His Majesty for His Kingdoms both of England and Ireland, and Lord President of the North during the time that all and every the Crimes and Offences before set forth were done and committed, and he the said Earl was Lieutenant General of His Majesty's Army in the North parts of England during the time that the Crimes and Offences in the 27th and 28th Articles set forth were done and committed.

On the 23rd February, 1641, the Earl of Strafford delivered his Answer to the Articles whereof the main substance is above set forth. Rushworth tells us that the Answer held three hours reading, being above 200 sheets of paper, and, after remarking that it was too lengthy for full insertion, gives an Abstract thereof covering ten folio pages.

Following upon this Answer, came a series of Committee Meetings held by the Commons lasting from the 26th February to the 20th March, 1641,—a perusal whereof shows how thoroughly the Commons managed the whole affair.

It is interesting to note that the Commons added four Lawyers to the Committee appointed to draw up the Charges against the

Earl, namely, Mr. Palmer, Mr. Selden, Mr. Whitlock and Mr. Maynard. The two latter in subsequent years held office under the Lord Protector Cromwell when the Great Seal was in Commission—their actual position being tantamount to that of the Lord High Chancellor. Selden of course is famous for his celebrated Treatise on the Law of the Sea “Mare Clausum.”

Having made this addition to the Committee in question, the Commons caused intimation to be made to the Lords that, as they intended to manage the Evidence by their own Members, they did not expect any Counsel to be permitted to appear on behalf of the Earl whereunto the Lords replied :—

The Earl of Strafford in matters of mere fact shall not make use of Counsel, but in matters of Law he shall ; and if any doubt arise what is matter of Law and what is matter of Fact, the Lords do reserve Judgment hereof to themselves.

To this the Commons made answer that

If at any time during the evidence, the Counsel for the Earl of Strafford interposed when the Members of the House were speaking, they must of necessity desist, because it would not become them to plead against Counsel; and as concerning the allowing of Counsel in matters of Law and reserving to their Lordships to judge the Doubts, what is matter of Law and what Fact, the Commons do save to themselves all Right that doth appertain to them according to Law and course of Parliament, and do declare that the Proceedings in this case shall not be drawn into President (Precedent) to the prejudice of the Commons. For the other matter concerning the Offence of the Counsel of the Earl of Strafford by being Counsel with him without leave of this House, the Committee could not proceed, the other matter taking up the whole time.

The names of the Members of the House who managed the Evidence against the Earl of Strafford (as related in Rushworth's Account of the trial) were

George Lord Digby

John Hampden

John Pym

Oliver St. John (shortly afterwards Solicitor General to King Charles I.)

Sir Walter Earle.

Jeoffrey Palmer (afterwards Knighted and made Attorney General under Charles II.)

John Maynard (afterwards Sergeant at Law to Charles II.)

John Glyn (Recorder of London.)

On Monday the 22nd March, 1641, at 7 a.m. the Earl was taken from the Tower by water to Westminster Hall. He was accompanied by six Barges, wherein were 100 soldiers from the Tower for his Guard. At his landing at Westminster, he was attended by 200 of the Trained Band, and went in guarded by them into the Hall. The entries at Whitehall, King Street and Westminster were guarded by Constables and Watchmen from 4 a.m.

Rushworth informs us that the King, Queen and Prince (afterwards King Charles II) came to the House about 9 a.m., but kept themselves private within their closets, so that the King saw and heard all that passed, but was seen of none in regard to which adds Rushworth

Some give the reason of this from the received practice of England in such cases. Others say that the Lords did intreat the King either to be absent, or to be there privately, lest pretensions might be made hereafter that his being there was either to threaten or some other ways to interrupt the course of Justice. A third sort, that the King was not willing to be accessory to the Process till it came to his part, but rather chose to be present that he might observe and understand if any Violence Rigour or Injustice happened.

When Strafford entered the Hall, the Porter of the Hall asked the Usher of the Black Rod whether the Axe should be carried before him or no, whereupon the latter replied that the King had expressly forbidden it.

After those concerned had duly taken their places, the prisoner was brought in by Sir William Balfour the Lieutenant of the Tower, and came to the Bar, where he knelt, and afterwards standing up, The Right Honourable the Earl of Arundel and Surrey (the Lord High Steward) opened the proceedings by informing the Earl of Strafford:—

Your Lordship is called here this day before the Lords in Parliament to answer to and to be tried upon the Impeachment presented to them by the Commons' House of Parliament in the name of themselves and all the Commons of England; And their lordships are resolved to hear both the Accusation and Defence with all Equity. And therefore think fit in the first place that your Lordship should hear the Impeachment of High Treason read.

Whereupon the Impeachment was read accordingly by the Clerk of the Parliament, as was also the Earl of Strafford's Answer—which concluded the proceedings on the first day.

At the resumption on the following day, Mr. Pym delivered the opening speech on behalf of the Committee appointed for the management of the Evidence in support of the Charge.

His language was vigorous and aptly suited to the subjects wherewith he had to deal. Those portions thereof which seem of especial interest are set forth below:—

My Lords

We stand here by the commandment of the Knights Citizens and Burgesses now assembled for the Commons in Parliament. And we are ready to make good that Impeachment whereby Thomas Earl of Strafford stands charged in their Name and in the Name of all the Commons of England with High Treason.

This, My Lords, is a Great Cause, and we might sink under the weight of it, and be astonished with the Lustre of the Noble Assembly, if there were not in the cause strength and vigour to support itself and encourage us. It is the cause of the King, it concerns His Majesty in the Honour of His Government, in the Safety of His Person, in the stability of His Crown.

It is the cause of the Kingdom. It concerns not only the Peace and Prosperity, but even the Being of the Kingdom. We have that piercing Eloquence, the Cries and Groans and Tears, and Prayers of all the subjects assisting us.

* * * * *

This unhappy Earl now the object of your Lordship's Justice hath taken as much care, hath used as much cunning to set a face and countenance of Honesty and Justice upon his actions as he hath been negligent to observe the Rules of Honesty in the Performance of all those Actions.

* * * * *

The service commanded me and my colleagues here, is to take off these Vizards of Truth and Uprightness which have been sought to be put upon this Cause, and to show you his Actions and his Intentions in their own natural Blackness and Deformity.

* * * * *

If you compare his courses with other parts of the World ungoverned, he will be found beyond them all in Tyranny and Harshness; but if you compare them with his mind and disposition, perhaps there was moderation. Habits we say are more perfect than Acts, because they be nearest the principle of Actions. The Habit of cruelty in himself, no doubt is more perfect than any Act of Cruelty he hath committed; but, if this be his Moderation, I think all men will pray to be delivered from it. And I may truly say that is verified in him *The Mercies of the Wicked are Cruel.*

* * * * *

He concludes with a desire that he may not be charged with errors of his understanding or judgment, being not bred up on the Law, or with weakness to which human Nature is subject. Truly it would be far from us to charge him with any such mistakes. No My Lords, we shall charge him with nothing but what the Law in every man's breast

condemns, the Light of Nature, the Light of Common Reason, the Rules of Common Society. And that will appear in all the Articles which my colleagues will offer to you.

Following Mr. Pym's speech, came one on the part of Strafford in support of the Preamble of his Answer, and then followed that of Mr. Maynard on the third day (Wednesday the 24th March, 1641) who, among other things, said :—

My Lords, I humbly address myself to that which we are ready to maintain, the Body of the Charge: And, because some time hath been spent between the reading of the Charge and the main of the Defence, I desire leave to open what is the Nature, what the Height and Quality, of the Offence of which this great Lord stands accused before you.

My Lords, it is a charge of the Highest Nature that can be against a man; a charge of High Treason. It is a Treason, not ending and expiring in one single Act of a discontented Heart, but a Habit, a Trade, a Mystery of Treason exercised by this Great Lord, ever since the King's Favour was bestowed on him.

My Lords, it hath two Evils to deprive us of that which is good; that is to subvert and take away the fundamental and ancient Laws whereby we are secured of whatsoever we do enjoy; it hath, My Lords, a positive Evil in it to introduce, instead of that, an Arbitrary Government bounded by no Laws, but by the evil Counsels of such Ministers as he hath been. My Lords, it is the Law that gives that Sovereignty which with all obedience and cheerfulness, the subject renders to the Sovereign. It is the Law, My Lords, that gives Honours to the Lords and Nobles; Interest, Property, and Liberty to the subject.

My Lords, the Law (as it is the Foundation and Ground of all these) hath its distribution in a course of Justice. Justice is derived (as by so many channels) by the several Courts of Justice; whereby the King's Justice (for it is His) is brought and conveyed to the subject.

My Lords, of all this hath my Lord of Strafford endeavoured not only to put the subject out of possession, but to make him incapable of the future Benefit of it.

* * * * *

The Particulars of this Treason are conveyed to your Lordships in 28 several Articles. I shall shortly and briefly touch but the Heads of those on which I shall insist, and give some distribution of them. And I think the best way will be this. To consider, first what he did, and what he said before he went into Ireland; then what he did and said there; and what he hath done since. And, in all of them, you will find that his main design, which I have opened, that Law might nowhere stand against his Will; and to settle it that he might continue so. My Lord hath declared this in incroaching Jurisdiction when it was not, in exercising an Arbitrary Power under that Jurisdiction; In taking on him a Power to make Laws; In Domineering and Tyrannizing over the Lives, the Liberties, the Goods, the Estates, and whatsoever is the Subject's.

And, My Lords, this hath been done, not only on those of the meaner sort that could not resist him, but on the Peers; on the greatest and most ancient Nobility of Ireland. And what might your Lordships expect, but the same measure at his hands, had his will had its passage here which it had in Ireland.

Thereafter, the proofs in support of the Articles of Impeachment were tendered.

The Evidence in support of the various charges contained in the Articles of Impeachment, and that in answer, having been concluded, the Lord High Steward on the 12th April said to the Earl

My Lord of Strafford, I am commanded by my Lords to let you know that they do expect your Lordship will go on in the order set to sum up your Lordship's Evidence; and those Gentlemen of the House of Commons will likewise sum up theirs, for the Close of Proofes in Matter of Fact; and that your Lordship do it with all Clearness and Succinctness, avoiding anything that may give Impediment to the Clear and Fair Proceedings of the Cause, which for Matter of Fact is come to a Period.

Rushworth then remarks that the Earl humbly desired that he might clearly understand what was expected in that case, and then he would perfectly obey my Lords in all things; adding that

he conceived that their Lordships' intention was that they should go upon what had been alleged before their Lordships without any new matter to be further alleged on either side—whereunto my Lord Steward replied "That if there be any new Matter, God Forbid but they might allege it."

To this, the Earl answered that he would offer no new matter unless it should arise from the other side, and then commenced his speech in the following words:—

May it please your Lordships, it falls to my turn, by your Lordships' leave and favour, to presume to put you in mind and to represent to you the Proofes as they have been offered, which I shall do to the best of my memory, with a great deal of clearness. I shall desire to represent them neither better nor worse than they are in themselves, and I wish the like Rule may be observed on the other side. For, in the proceeding of this cause, I heard them allege that, as they conceived, divers Articles were fully proved; whence I conceive there was nothing fully proved. My Lords, my memory is weak, my health hath been impaired, and I have not had such quiet thoughts as I desired to have had in a business of so great and weighty importance to me: And therefore, I shall most humbly beseech your Lordships that by your Wisdom, your Justice, and Goodness, I may be so much bound to you as to have my Infirmities supplied by your better Abilities, better Judgments, and better Memories. My Lords, the charge I am to answer is a charge of High Treason, and, that which makes it most grievous of all, it is an Impeachment of Treason from the Honourable House of Commons: were not that in the Case, my Lords, it would not press so heavy and sore upon me as now it doth, having the Authority and Power of their names upon it: otherwise, my Lords, the Innocency and the Clearness of my own heart from so foul a Crime is such that I must with modesty say, if I had no other sin to answer for, it would be easily borne.

My Lords, as I went along Article by Article, these Gentlemen were pleased to say they were no Treasons in themselves but conducing to the Proof of Treason: and most of the Articles being gone over, they come to the Point at last. And hence, my Lords, I have all along

watched to see if that I could find that Poysoned Arrow that should Invenome all the rest, that Deadly Cup of Wine that should Intoxicate a few alleged Inconveniences and Misdemeanours to run them up to High Treason.

My Lords, I confess it seems very strange to me that there being a special difference between Misdemeanours and between Felonies and Treasons; How is it possible that ever Misdemeanours should make Felonies or a hundred Felonies make a Treason? Or that Misdemeanours should be made Accessories to Treason, where there is not a Principal in the Case? No Treason, I hope, shall be found in me, nor in anything I hear to be charged, under favour, and not waived. They say well, that if a man be taken threatening of a man to kill him, conspiring his death, and with a Bloody Knife in his hand, these be great Arguments to convince (convict) a man of Murder. But, then under favour, the man must be killed; for, if the man be not killed, the murder (*i.e.* the charge of murder) is nothing. So all these things that they would make conduce to Treason, unless something be Treasonable, under favour, they cannot be applied to Treason.

My Lords, I have learnt that in this case which I did not know before, that there be Treasons of two kinds; there be Statute Treasons, there be Treasons at Common Law, or Treasons Constructive and Arbitrary.

My Lords, these Constructive Treasons have been Strangers in this Commonwealth a great while, and I trust shall be still, by Your Lordships' Wisdom and Justice: But, as for Treasons in the Statute, I do, with all gladness and humility, humbly acknowledge Your Lordships to be my Judges, and none but you, under favour, can be my Judges: His Majesty is above it, the King condemns no man: the great operation of his Sceptre is Mercy; His Justice is dispensed by his Ministry; so he is no Judge in the Case (with Reverence be it spoken), and likewise no Commoner can be Judge in the Case of Life and Death, under favour, in regard he is of another body: So that, my Lords, I do acknowledge entirely you are my Judges, and do, with all cheerfulness in the World, submit myself unto you; thinking that I have great cause to give God Thanks, that I have you for my Judges, and God be praised it is so; and Celebrated be the Wisdom of your Ancestors that have so ordained it.

My Lords, I shall observe these Rules: First I shall (as I hope) clear myself of Statute Treason, and then come to Constructive Treason, or Treason at the Common Law.

The Earl then proceeded to deal with the specific charges of Statute Treason and the evidence called in support thereof, and next with the instances regarding Constructive Treason alleged against him, and in each particular investigated the evidence minutely, with a view to showing the lack of proof of the charges brought.

As Hallam (as previously remarked) foreshadows, varied must be the feelings of those who study the proceedings connected with this portentous Trial, which, as he truly says, "is the period from which the factions of modern times trace their divergence, and which still calls forth the warm emotions of party spirit, and affords a test of political principles."

Lord Nugent, in his "Memorials of John Hampden, his Party and his Times" writes

Strafford, before his great speech in defence, had spoken at the close of each separate charge, and had lost no occasion to challenge the support of the Peers by the shrewdness and vigour of his reasoning, or to enlist on his side the sympathies of an assembled audience of almost all the first persons in the land by his forcible and sometimes deeply pathetic eloquence. *With such as are swayed in their judgment of guilt by their admiration of a courageous heart, and a nobly gifted mind struggling against danger and dishonour, Strafford's acquittal is always sure.* And to these feelings he frequently and powerfully appealed.

* * * * *

Upon the treasonable words deposed to by Bristol, Northumberland, Holland and Newburgh he thus declaimed

Shall words spoken by way of argument in common discourse between man and man, when nothing has been done upon them, shall such bare words be brought against a man and charged on him as High Treason? God forbid that we should ever live to see

such an example in this Kingdom. If words spoken to friends in familiar discourse, spoken in one's Chamber, spoken at one's table, spoken in one's sick-bed, spoken perhaps to gain clearer light and judgment by reasoning, if these can be brought against a man as Treason, all intercourse, all confidence, all the comfort of human society are destroyed. Let no man henceforth venture to impart his solitary thoughts to his friend or neighbour.

Never, it must be confessed, was an ordinary artifice managed with more masterly address than in the construction of this noble appeal to the highest and most generous passions of a noble audience. Nothing can be more different from the supposed situations or circumstances described (the chamber, the table or the sick-bed) than those which were in evidence; phrases used by a Minister in deliberation with Officers and Statesmen on Acts of State to be done by them. And yet, manifest as is the fallacy, it is an appeal against which the heart is with difficulty guarded.

Lord Nugent throughout weighs up the position most fairly and impartially, witness his earlier remarks

Overbearing and tyrannical as was the temper of Strafford, no one can refuse admiration to that commanding ability and haughty courage of demeanour which forsook him not at any time in this great Trial. The energies of his mind increased in vigour and capacity, his natural spirit broke forth into greater fervour and brightness, as he beheld himself more and more closely encompassed by the toils of his bold and indefatigable prosecutors. From the hour when the first proceedings against him were announced, he must have seen that his danger was great, and his defences, at the best, precarious.

Let us turn now to Guizot's "History of the English Revolution of 1640 from the accession of Charles I to his death," whose description of the Trial and Strafford's wonderful defence is graphic in the extreme. Thus

Brought by water from the Tower to Westminster, the prisoner passed through the multitude assembled at the doors, without compassion or insult; despite the general hatred, his so recent greatness,

his deportment, the very terror attached to his name, still commanded respect. As he proceeded on, his form prematurely bowed by sickness but his eye glittering and haughty as in his youth, the crowd made way and uncovered, and he saluted them with courtesy, regarding this demeanour of the people as a good omen. Hope had not failed him; he despised his adversaries; had well studied their charges, and did not doubt he should clear himself of the crime of High Treason. The accusation of the Irish alone had for a moment astounded him; he could not understand how a Kingdom till then so submissive—nay so eager to flatter and to serve him—could thus so suddenly have changed. The second day, an incident showed him that he had misunderstood his situation and the difficulties of his defence :

I hope (said he) I shall easily repel the imputations of my malicious enemies.

At these words Pym, who was managing the Trial, angrily took him up.

It is to the Commons (said Pym) this insult is addressed; and I pronounce it a crime thus to charge them with malicious enmity.

Strafford, agitated at this, fell upon his knees, apologised, and from that moment, perfectly calm and self-possessed, allowed to escape him not one sign of anger or even of impatience, not a word which could be turned against him.

Having thus digressed for the purpose of indicating the views of the learned authors above mentioned in regard to the events concerning the Trial up to the point previously reached, I will again take up the thread of the Earl's discourse in his Reply to the charges brought against him.

Having dealt specifically and in detail with the charges and the evidence in support, the Earl commenced the peroration, concerning which Nugent writes,

Then followed that great last speech of the Earl himself before the Lords, the peroration of which has been so often and so deservedly celebrated as one of the finest specimens of pathetic eloquence in our language.

* * * * *

Indeed, so beautiful are several of the passages which precede it, that it would be difficult to determine where the quotation ought to commence. No reader, who is not familiar with the conclusion of that speech, will repent the having searched for it in the report of the trial; and if, in the course of that search, he should be led to read through the whole of that memorable defence, he will be well repaid for the time which it will have cost him.

Warming to his subject the Earl proceeded

And so I can come to the end of these 28 Articles, that were for my further Impeachment; I have gone over them all: and out of these now there remains that other Second Treason, that I should be guilty of endeavouring to Subvert the Fundamental Laws of the Land, in the first of those Seven Articles.

My Lords, that those should now be Treason together, that are not Treason in any one part, and Accumulatively to come upon me in that kind; and where one will not do it of itself, yet woven up with others, it shall do it; under favour, my Lords, I do not conceive that there is either Statute Law or Common Law that hath declared this endeavouring to Subvert the Fundamental Laws to be High Treason.

I say, neither Statute Law nor Common Law written that I could hear of, and I have been as diligent to enquire of it as I could be: And your Lordships will believe I had reason to do so. And sure it is a very hard thing, I should be here questioned for my Life and Honour, upon a Law that is not Extant, that cannot be shewed. There is a Rule that I have read out of my Lord Cook (Coke) '*non apparentibus et non existentibus eadem est ratio.*' Jesu' My Lords, where hath this Fire lain all this while, so many hundred years together, that no smoke should appear till it burst out now, to ensnare me and my children. Hard it is, and extreme hard in my opinion, that a Punishment should precede the Promulgation of a Law; that I should be punished by a

Law subsequent to the Act done. I most humbly beseech your Lordships to take that into consideration; for certainly it were better a great deal to live under no Law, but the Will of Man and conform ourselves in Humane Wisdom as well as we could; and to comply with that Will, than to live under the protection of a Law as we think, and then a Law should be made to punish us for a Crime precedent to the Law: then I conceive no Man living could be safe if that should be admitted.

My Lords, it is hard in another respect, that there should be no Tokens set upon this offence by which we know it; no manner of Token given; no Admonition by which we might be aware of it. If I pass down the Thames in a boat, and split myself upon an Anchor, if there be not a Buoy to give me warning, the Party shall give me Damages; but, if it be marked out, then it is at my own peril. Now, my Lords, where is the Mark set upon this Crime? Where is the Token by which I should discover? If it be not marked, if it be under water, and not above, there is no Human Providence can prevent the Destruction of a Man presently and instantly. Let us then lay aside all that is Human Wisdom, let us rely only upon Divine Revelation, for certainly nothing else can preserve us, if your will condemns us before you tell us where the fault is: My Lords, may your Lordships be pleased to have the regard to the Peerage of England, as never to suffer yourselves to be put upon those moot points, upon such Constructions and Interpretations and Strictures of Law as these are, when the Law is not clear nor known. If there must be a Tryal of Wits, I do most Humbly beseech your Lordships to consider that the subject may be of something else than of your Lives and your Honors.

My Lords, we find that in the primitive time on the sound and plain Doctrine of the blessed Apostles, they brought in their books of curious Art and burnt them.

My Lords, it will be likewise, under favour, (as I humbly conceive) Wisdom and Providence in your Lordships for yourselves and posterities, for the whole Kingdom, to cast from you into the Fire those Bloody and Mysterious Volumes of Constructive and Arbitrary Treasons, and to betake yourselves to the Plain Letter of

the Statute, that tells you where the Crime is, that so you may avoid it; and let us not, my Lords, be ambitious to be more learned in those killing parts than our Forefathers were before us.

My Lords, it is now two hundred and forty years since any Man was ever Touched to this height upon this Crime before myself. We have lived, my Lords, happily to ourselves at Home; we have lived gloriously abroad to the World. Let us be content with that which our Fathers left us, and let us not awake those sleepy Lions to our own destruction, by Rattling up of a Company of Records that have lay'd for so many ages by the wall, forgotten or neglected.

My Lords, there is this that troubles me extremely, lest it should be my misfortune to all the rest (for my other sins, not for my Treasons) that my Precedent should be of that Disadvantage (as this will be I fear in consequence of it) *upon the whole Kingdom.*

My Lords, I beseech you therefore, that you will be pleased seriously to consider it, and let my particular case be so looked upon, as that you do not, through me, wound *the interest of the Commonwealth*; For howsoever those Gentlemen at the Bar say, they speak for the Commonwealth, and they believe so, yet, under favour, in this particular, I believe I speak for the Commonwealth too, and that the inconveniences and miseries that will follow upon this, will be such as it will come, within a few years, to that which is exprest in the Statute of Henry the Fourth, it will be of such a Condition, that no Man shall know what to do, or what to say.

Do not, my Lords, put greater Difficulty upon the Ministers of State, than that, with Cheerfulness, they may Serve the King and the State; for if you will examine them by every Grain or every little Weight, it will be so heavy that the Public Affairs of the Kingdom will be left waste, and no Man will meddle with them that hath Wisdom and Honor and Fortune to lose.

My Lords, I have now troubled your Lordships a great deal longer than I should have done; Were it not for the Interest of those *Pledges* (his children) that a Saint in Heaven left me, I would be loth, my Lords—(here says Rushworth his weeping stopped him). What

I forfeit for myself is nothing, but I confess that my Indiscretion should forfeit for them, it wounds me very deeply. You will be pleased to pardon my Infirmary; something (more) I should have said, but I see I shall not be able, and therefore I will leave it.

And now, my Lords, for myself, I thank God I have been, by his Good Blessing towards me, taught *that the afflictions of this present life are not to be compared with that Eternal Weight of Glory that shall be revealed for us hereafter.* And so, my Lords, even so, with all Humility, and with all Tranquility of Mind, I do submit myself clearly and freely to your Judgments, and whether that Righteous Judgment shall be to Life or to Death—

Te Deum Laudamus.

Te Dominum Confitemur.

Strafford's Reply in General as above was made on the 12th April, 1641. Meanwhile, the Commons, greatly perturbed at the vigour of Strafford's defence and the ability with which he purported to refute the charges brought against him, and doubtless noting the effect of the defence on the minds of the Lords, and also realising the danger to themselves and to the Liberties of English Subjects if their prey should escape from the toils with which they had encompassed him, had been meeting and debating the position in almost daily conference, and, in the result, resolved upon the sudden and bold stroke of bringing in a Bill of Attainder for the purpose of at one and the same time declaring Strafford guilty and condemning him to death by Act of Parliament. This, as students of English History will recollect, was the policy of Henry VIII, introduced by his favourite (in succession to Cardinal Wolsey) Thomas Cromwell Earl of Essex, who himself, meritoriously enough in that respect, suffered the pain of death thereunder. Guizot evidently had this in mind when he wrote

This proceeding, which dispensed the Judges from all law, was not without example, though its precedents all belonged to periods of tyranny, and had even been denounced soon after their occurrence as iniquitous.

Supplementary proof in support of the Bill of Attainder, was offered, in the shape of certain Papers given by Sir Henry Vane (one of the Secretaries of State) to his son, which consisted of Notes concerning a Debate in Council, which Sir Henry Vane had taken. It is said, that the latter had forwarded the Keys of the Cabinet wherein these papers were kept, to his son, in order that the latter might search for other papers which were essential to the completion of a Marriage Settlement. Be this as it may, the younger Vane upon the discovery of the Notes concerning the Debate above mentioned, communicated with Pym, who produced the papers to the Commons.

The question arising at the Debate at which the Notes had been taken, had regard to *offensive or defensive War with the Scots*. The King (Charles I) had indicated a difficulty with regard to supplies, to which, it was alleged, Strafford had made a suggestion in the following words.

Borrow of the City (London) a hundred thousand pounds : go on vigorously to levy Ship Money. *Your Majesty having tried the affections of your people, you are absolved and loose from all rules of government, and may do what power will admit.* Your Majesty, having tried all ways, shall be acquitted before God and Man. *And you have an Army in Ireland, which you may employ to reduce this Kingdom to obedience : for I am confident the Scots cannot hold out five months.*

With the papers in question, were others, containing advice from Laud and Cottington of a piece with Strafford's suggestion, and particularly enjoining that the King was absolved from all rules of government.

Here was matter for explosion indeed, though, in regard to the remarks concerning the employment of the Irish Army, it must be observed, that the Kingdom referred to as being that against which it should be employed, was obviously a matter for contention in more senses than one, *for, be it noted, a reference to the Scots follows immediately after that to "this Kingdom."*

Pym and his party strenuously argued that the proof given by the above Papers was incontrovertible, while Strafford's friends not only animadverted upon the fact that Sir Henry Vane was an implacable enemy of Strafford's, but pointed to the evidence given at the Trial, (whereat Sir Henry had at his first two examinations been altogether unable to remember any such words, and had at his third examination been far from able to speak at all positively regarding them) and contended that, touching the matter of his credit as a witness, not only was the question one of life and death, but that the facts regarding the production of the papers, were such as to deprive Sir Henry Vane of all right to be regarded as a reliable witness.

Other equally weighty arguments were adduced by Strafford's friends, as, that of the Six Councillors present at the Debate purporting to be reported by the Papers in question, two could give no evidence, while the other four could recollect no such expressions, and that the actual disposition of the forces, coupled with the evidence of other Ministers, was available to prove the contrary to the alleged intention of utilising the Irish Army in England, and that Scotland was clearly the intended locale. Finally, they submitted that it would be notoriously unfair that Strafford should be attainted of Treason in respect of evidence simply based upon words spoken in the course of proceedings in Council, where the utmost freedom of speech should be permitted, since, if the contrary rule obtained, all honesty of debate might be postponed to dishonest counsel.—All the foregoing notwithstanding, the Bill of Attainder secured a two fold reading instantan—*the date then being the 10th April 1641—two days prior to Strafford's great speech.* Of the Members present at the debate, Guizot remarks that some thought they were sacrificing Law to Justice, and others Justice to Necessity.

Meanwhile, Strafford, as we have seen, was fighting for his life against tremendous odds. Deprived of that degree of assistance to

which in later days he would have been held fairly entitled, outweighed by numbers whose ranks included the most skilled Lawyers of the time, and pursued by them with a rancour which in happier days it is difficult to understand or appreciate, destitute of all weapons of *offence*, he was restricted for *defence* to his own natural Wit and Eloquence, wherein all must agree that he compels the admiration of friend and foe alike. That this is so, is shown by the writings of Bulstrode Whitlock or Whitelock (afterwards Lord Commissioner Whitlock—one of the Keepers of the Great Seal) who, as we have already noticed, was one of those appointed by the Commons to draw up the Charges against Strafford, and who throughout took a prominent part at his Trial. This writer (the author of “Memorials from the Accession of Charles I till the Restoration of Charles II”) says regarding Strafford’s Trial,

Never any man acted such a part, on such a theatre with more wisdom, constancy and eloquence, with greater reason, judgment and temper, and with a better grace in all his words and actions, than did this great and excellent person; and he moved the hearts of all his auditors—some few excepted—to remorse and pity.

Whitlock, though Strafford’s opponent, was so eminently fair minded that he declined to associate himself with the Article under which Strafford was accused of the design of utilising the Irish Army for the subjection of England, since he considered that Article unsupportable by the evidence, and moved for its removal on the ground that it would not be honourable for the House of Commons to put forward an Article in respect whereof they could offer no clear proof. The Article in case was retained none the less, but Strafford himself gave record to Whitlock’s fairness and ability, remarking that Glynn and Maynard had used him like Advocates, but Palmer and Whitlock like Gentlemen, though they had left out nothing that was material to be urged against him.

Guizot, who is no less complimentary to Strafford, writes

For seventeen days he, unaided, against thirteen accusers, who relieved one another, argued the Charges which they brought forward. A great many were incontestibly proved, convicting him of injustice and tyranny. But others, foolishly exaggerated or blindly credited by hatred, were easily repelled, and none in truth came within the legal definition of High Treason. Strafford applied all his efforts to dispossess them of this character, speaking with magnanimity of his imperfections, of his frailties, opposing a modest dignity to the violence of his adversaries, and proving, without contumely, the passion-born illegality of their proceedings. Disgraceful obstacles impeded his defence; his Counsel, obtained with great difficulty and despite the Commons, were not allowed to speak as to facts, nor to examine the witnesses; permission to bring forward witnesses for the defence was not granted him till three days before the Trial commenced, though most of them were in Ireland. At every opportunity, he claimed his right, thanked his Judges if they consented to acknowledge it, made no complaint when they refused, and simply replied to his enemies, who were angry at the delays created by his able defence, 'I have as much right, I believe, to defend my life, as others have to assail it.' So much energy embarrassed and humiliated the accusers. Twice (March 25th and April 9th) the Commons summoned the Lords to proceed more rapidly with a Trial, which they said caused them to lose time highly precious to the Country. The Lords refused; the Success of the accused gave them back a little energy. When the case for the prosecution was over, before Strafford's Counsel had opened their lips, or he himself had resumed his defence, the Impeachment Committee felt themselves conquered, at least as to proof of High Treason. The excitement in the Commons became extreme: favoured by the letter of the law and his own fatal genius, this great criminal, then, was about to escape them, and reform, scarcely born, would once more have to sustain the attack of its most dangerous enemy.

Consequently, as I have previously shewn, the Commons had resort to the desperate expedient of bringing in the Bill of Attainder.

Again, in dealing with the position at the close of Strafford's great speech, Guizot remarks

The auditory were seized with pity and admiration. Pym was about to answer. Strafford looked at him; menace gleaming in the immobility of his mien; his pale and protruded lips bore the expression of passionate scorn; Pym was agitated, and paused, his hands trembled, and he sought without finding it a paper which was just before his eyes. It was the answer he had prepared, and which he read without being listened to by anyone, himself hastening to finish an harangue foreign to the feelings of the assembly, and which he had great difficulty in delivering.

Guizot is in error in certainly one respect in regard to his above mentioned remarks, for Pym's speech did not follow that of Strafford but that of Mr. Glyn (Recorder of London) who as we have seen was one of the Managers of the Impeachment on behalf of the Commons.

Lord Campbell in his celebrated "Lives of the Chancellors" refers to "the noble prisoner (who) unassisted, carried on against the most distinguished lawyers and Statesmen of the Country party, and against public prejudice and passion that heroic struggle which seemed to render the result doubtful, and which shed such a lustre on his closing scene," and then proceeds to quote the lines

Now private pity strove with public hate
Reason with rage, and eloquence with fate
So did he move the passions, some were known
To wish for the defence, the crime their own.

The lines in question are by Sir John Denham, who flourished in the reign of Charles I and also in that of the latter's profligate son Charles II, wherein he distinguished (and incidentally nearly extinguished) himself by marrying, in his 79th and her 18th year, Miss Brook, a cousin of the then Earl of Bristol and a favourite of James, Duke of York (afterwards James II), and by being subsequently attacked by certain rowdy elements of the populace on a charge of having, through jealousy, poisoned her.

Samuel Butler, in his “Hudibras” (published in 1662), pours ridicule on verses of that calibre in the following words, which, however, refer not to Sir John Denham, but to some other “Wit” of those days—the name of the actual person designate being in dispute :

* * * * * *

Beside all this, he served his master
 In quality of poetaster
 And rhymes appropriate could make
 To ev'ry month i' th' almanack ;

* * * * * *

A carman's horse could not pass by,
 But stood ty'd up to poetry :
 No porter's burden passed along,
 But served for burden to his song :
 Each window like a pill'ry appears,
 With hands thrust thro' nailed by the ears ;
 All trades run in as to the sight
 Of monsters, or their dear delight
The 'gallow-tree,' when cutting purse
Breeds bus'ness for heroic verse,
Which none does hear, but would have hung
T'have been the theme of such a song.

—a satire which, however, pales before that of Dryden (the Poet Laureate of those days), who, in his “Absalom and Achitophel,” pictured George Villiers Duke of Buckingham as “Zimri,” and delineated his character in these words.

A man so various, that he seemed to be
 Not one, but all mankind's epitome ;
 Stiff in opinions, always in the wrong,

Was everything by starts, and nothing long.
 But in the course of one revolving moon
 Was chemist, fiddler, statesman, and buffoon.

Revenons à nos moutons !

At the conclusion of Strafford's great Speech, Mr. Glyn addressed the Lords as follows :

May it please your Lordships, My Lord of Strafford (as your Lordships have observed) hath spent a great deal of time in his Evidence, and in his course of answering hath inverted the order of the Articles: he hath spent some time likewise in defending the Articles not objected against him (this has reference to certain Articles in regard whereto no evidence was offered) wherein he hath made a good answer, if in any; we shall presume to withdraw a little, and rest upon your Lordships' patience; and I doubt not but to represent my Lord of Strafford as cunning in his Answer as he is subtle in his practice.

The Committee of Managers then withdrew for the space of about half an hour, and, upon their return, Mr. Glyn proceeded with his Speech, remarking

My Lords, your Lordships have observed how the Earl of Strafford hath been accused by the Commons of England of *High Treason for a purpose and design to subvert the Fundamental Laws of both the Kingdoms of England and Ireland and to introduce an Arbitrary and Tyrannical Government.* The Commons have exhibited Articles in maintenance of that Charge. My Lord of Strafford hath thereunto answered in writing. The Commons have proceeded to make good their Charge by proof, and thereunto my Lord of Strafford hath made his Defence; and this day my Lord of Strafford has taken upon him to re-collect his Evidence, and make his observation upon it, the most he could to his advantage.

My Lords, we that are interested for the House of Commons stand here to re-collect the Evidence on our part, and to apply it to the general Charge, and how far it conduces thereunto.

My Lord of Strafford in re-collecting the Evidence of his Defence, as I did mention before, hath (under favour) expressed very much subtlety, and that in divers particulars which I shall represent to your Lordships.

My Lords, before I enter upon the re-collection of the proofs produced on behalf of the Commons, I shall make some observations, and give some answer to that re-collection of his; though very disorderly to the method I propounded to myself.

And first, in general, it will appear to your Lordships (looking upon your Notes and observing his re-collection) that he hath used the repetition of Evidence on both sides, in such manner as you know who useth Scripture; that is to cite as much as makes for his purpose and leave out the rest.

Pausing for a moment, I would remark that the passage last above cited constituted a pretty clear reference to the father of lies! and can hardly be viewed as consonant either with the dignity of the speaker or the Tribunal to whom they were addressed.

Next Mr. Glyn observed

And likewise, in repetition of the Evidence he hath mis-recited very plainly very much of the proof on both sides, and likewise hath pretended some proofs to be for his Defence, which indeed were not; and he hath taken this farther advantage, when it makes for his Defence he hath disjointed the Proofs and Testimonies and severed them asunder, that it might appear to your Lordships like Rain falling in drops, which, considered as distinct drops, bring no horror or seeming inconvenience with them, but, when they are gathered together into an entire body, they make an Inundation and cover the face of the earth. He would not have your Lordships look on those Testimonies together but distinctly and asunder, which being put together look horrid as will appear to your Lordships when you duly consider of them.

These be the general observations which in my Answer I doubt not but to make good: But before I shall enter into observations of what he hath spoken, I shall answer in general to some things which he hath in general alleged.

In the first place, he hath made a flourish this day and several other days in the way of his Defence, *That if he could have had longer time, he could have made things appear clearer and have produced more proofs.* Give me leave to inform your Lordships that he is in no way straightened of time, for he hath been charged above three months since : he knew what was laid to his charge, and therefore his pretence of want of time and of his disabilities to make better proofs are but *flourishes.* And it appears plainly, whatsoever he hath had occasion to make use of, even the least paper, though he fetched it from Ireland, there is not one wanting : he hath copies of Papers from the Council Table, from the Parliament of Ireland, and all that may in any way tend to his justification, and yet he stands upon that *flourish, that if he had had time, he could have made it more clear.*

My Lords, he hath mentioned it often this day, and oftener the days before, *That many of the Articles laid to his charge are proved but by one witness;* and thereupon he takes advantage of the Statute of Edward VI that says *A man ought not to be condemned for High Treason without two witnesses.* My Lords, this is a *fallacy* known to his own breast I doubt not, and not taught to him by any of his Counsel, or others Learned.

The Treason laid to his charge is the *Subverting of the Laws;* the evidence is the Article proved : and, though some one Article appears to be proved but by one, yet put the Evidence together, you shall never find it to be within the words or meaning of the Statute, for the Charge is proved by a hundred witnesses: and because one part of the Evidence is proved by only one witness, since, when you put them together you will find a hundred witnesses, it is not within the words nor meaning of the Statute, neither will his Counsel direct him to say so, I am confident.

My Lords, another observation I shall be bold to make, is, that he was pleased to cast an aspersion (as we must apprehend) upon them that are trusted by the House of Commons this day : that we that stand here alleged things to be proved that are not proved. He might have pleased to have spared that language. We stand here to justify ourselves, that we do not use to express any language but what our hearts

and our conscience tell us is true ; and, howsoever he is pleased to act it upon us, I am confident I shall invert it upon himself and make it appear that he hath been this day guilty in the highest degree of what he most unjustly lays to our charge.

And now, my Lords, to enter upon the particulars he hath been pleased to make it his general Theme to deny (though he hath not spoke much to-day but what he hath spoken formerly) *that these particulars considered by themselves make not a Treason, and therefore put together he wonders how they should make a Treason : Several Misdemeanours can never make a Murther (Murder) and several Murthers can never make a Treason ; and he wonders it should be otherwise in this case.* My Lords, he did instance it (if my memory fails not) in a case of Felony, *that if a bloody knife should be produced in the hand of the party suspected to have slain the man, if the party had been there before the death, it were a strange evidence, but there must be death in the case, the fact must be committed, else there can be no murther ;* but he himself might answer himself, for there is a great difference. There cannot be murther but there must be death, but he knows very well there may be Treason and yet no death : it is too late to forbear questioning Treason for Killing the King till the King be killed : God forbid we should stay in that case, for the *very intention is the Treason, and it is the intention of the death of the Law that is in question, and it had been too late to call him to question to answer with his life for the death of the Law if the Law had been killed, for there had been no Law then ; and how should the Law then have adjudged it Treason, when the same were subverted and destroyed ;* and therefore he is much mistaken.

The greatest Traitor in the memory of any that sits here to hear me this day, had a better and fairer excuse in this particular than my Lord of Strafford, and that is Guido Faux (Guy Fawkes) ; for he might have objected that the taking of the cellar, the laying of the powder under the Parliament House, the kindling of the match, and putting it near are not so much as a misdemeanour, if you look no further, for it was no offence in him to lay barrells under the Parliament House and to kindle the match, and to lay it near ; but to collect all together, that it was *ea intentione to blow up the King and the State*, there is the Treason : but God be blessed it was not effected ; so that the Rule is the

same. Nay, my Lord of Strafford hath not so much to say when he is Charged with a purpose and intention to Subvert the Law, for to that purpose gave he traiterous Counsels and executed actions, thereby discovering his intentions to destroy the Kingdom, and to destroy the King's claim by Law and Descent. It is true they were not put in execution, but they declared his intentions; therefore this gives an answer to the first flourish, which is not so great an Argument as the greatest Traitor (Guy Fawkes is referred to) might use for himself, and yet it proved Treason in him.

My Lords, he hath been pleased to divide his Treasons into two parts, and his division I allow of, that is Treason by Statute Law, as he terms it, though it be Treason by the Common Law, and Constructive Treason. And upon that method he hath recited the evidence produced on either part. Give me leave to follow and trace him a little, and afterwards to discharge my own duty in taking my own course and representing the evidence as it appears truly; and I will avoid (as much as I can) to fall into my Lord of Strafford's error in mis-reciting a particle; if I do it shall be against my Will.

Mr. Glyn then dealt at great length with the Charges contained in the various Articles and Lord Strafford's Reply thereto, and finally, in general summary of all his own arguments, addressed the following remarks to the Peers.

My Lords, my Lord of Strafford doth very well know (and if he doth not know it, I have a Witness to produce against him, which I will not examine, but refer it to his own Conscience, that is *the Petition of Right*) that *the King's servants are to serve him according to Law and no otherwise*. He very well knew if an unlawful act be committed, especially to a degree of Treason and Murder, the King's authority and warrant produced is no justification at all. So then, my Lords, to mention the King's name to justify an unlawful act in that way, can do him no good, and his own understanding knows it may do the King harm, *if we had not so gracious a King that no such thing can do harm unto*.

But my Lords, to produce the King's Warrant to justify his actions under his Patent and Command, what is it else but, so far as in him

lies, in the face of his people to raise a cloud and exhale a vapour? To interpose betwixt the King and his Subjects, whereby the Splendour of his Glory and Justice cannot be discovered to his people?

My Lords, what is it else when the people make complaint against the Ministers (that should execute justice) of their oppression and slavery and bondage? For the Minister, when he is questioned, to justify this under the King's Authority, what is it I say but, as much as in that Minister lies, to fix this offence, to fasten this oppression upon the King himself, to make it be believed that the occasion of these their groans proceeded from His Sacred Majesty? Yet, God be thanked, the strength of that Sin is powerful enough to dispel these vapours and to disperse the Cloud that he would have raised; but, in the meantime, my Lord is nothing to be excused.

My Lords, he may pretend zeal to the King's service and affection to His Honor, but give me leave not to believe it, since, when he is questioned by all the King's people, and in the face of his people, and offences laid to his charge, which himself now confesses to be against Law, he should justify it under the King's Authority; And favours not of a good Servant: I will say no more.

My Lords, he is charged with exercising a tyrannical power over the King's people, and in his Defence your Lordships have often heard (and I may not omit it) that he shelters himself under the protection of the King's Prerogative, though he be charged with Tyranny of the highest nature that may be. See then how foul and malignant an aspect this hath. My Lords, what is it else but to endeavour, as much as in him lies, to infuse into the King's heart an apprehension that his Prerogative is so bottomless a Gulf, so unlimited a Power, as is not to be comprehended within the Rules of Law or within the bounds of Government? for else, why should he mention the Prerogative when he is charged to exceed the Law? What is it else, but, as far as in him lies, to make the people believe (for I may not forget the words he hath used) *by his magnifying of the Prerogative that it hath a special Stamp of Divinity on it*, and that the other part of the Government that God pleases to put into the King's hands had not that Stamp upon it, as if anything done by one was to be justified by authority from Heaven, but the other not?

These expressions your Lordships remember, (and I may not omit to put your Lordships in mind of them), and I can expound them no otherwise than, as much as in him lies, to make the Subject believe and apprehend that which is the buckler and defence of his protection to be the two-edged Sword of his destruction, according to the doctrine he preached, and that which is the Sanctuary of their Liberty is the Snare and Engine of their Slavery. And thus he hath cast a bone of contention, as much as in him lay, betwixt King and People to make the Subjects loathe that glorious flower of his Crown, by fixing a jealousy in them, that it may be a means of their bondage and slavery.

But there is so much Pity and Goodness in the King's heart, that I hope upon fair understanding there will be no such occasion; but no thanks to the party that so much advanced the Prerogative in the case and condition he stands in to justify that which is laid to his charge of High Treason.

My Lords, (I beseech you give me leave) there is no greater safety to Kings and People than to have the Throne encircled with good Counsellors, and no greater danger to both than to have it encompassed with wicked and dangerous ones. And yet I beseech you call to mind how he hath attempted to deprive the Subject of all means to discover this danger, by insinuating to your Lordships *what a dangerous thing it were if Counsellors should be called in question for giving of Counsel, for who then (saith he) would be a Counsellor? Where is your safeguard? Where is the King's service?* Is not this, as much as in him lies, to deprive the people of the means whereby they must make themselves happy, and whereby the King must be happy, that is by his having good Counsellors about him? And yet he infuses that venom, that the *questioning of Counsellors is dangerous both to King and Peers if it should be brought into example.* My Lords, for many years by-past your Lordships know an evil spirit hath moved amongst us, which in truth hath been made the Author and ground of all our distractions, and that is necessity and danger. This was the bulwark and the battery that serves to defend all exorbitant actions; the ground and foundation of that great invasion of our Liberties and Estates, the Judgment in the Ship Money, and the ground of the Counsel given of late to do anything, and to persuade the King *that he was absolved from all rules of Government.* And yet your Lordships

have observed in the course of his Defence, how often he hath raised *this spirit, that God be thanked hath been laid* to the great comfort of King and Kingdom by your Lordships and all the Commons in Parliament. And when he stands under this question and goes about to justify his exorbitant actions, how often he hath created this Idol again? And therefore I am afraid he discovers too much his own heart in it.

My Lords, I may not omit some other passages in his Defence; *How he hath cast scandals upon three Nations in this place*, that is in his first day of Defence, when the Irish Remonstrance made by all the Commons of Ireland was produced by the Commons of England, he expressed in a passion *that things were carried against him by faction and correspondence and (if he had time he would make it appear) with a strong conspiracy*. Here is a scandal cast upon the Parliament of Ireland, with a reflection on the Commons of England. Howsoever, it is true your Lordships may remember the recantation he made that day, which I will not omit, desiring not to lay anything to his charge but what is true; but it is the reflection of a scandal that I cannot omit to put your Lordships in mind of, and the rather because this Remonstrance presented from the Parliament of Ireland did bear date before my Lord of Strafford was charged here, which is very remarkable, namely, the 7th November, and therefore, though he pretends a correspondence, certainly there could be none then, for he is not charged here till the Tenth.

And the same day, justifying a sentence in the Castle-Chamber, your Lordships remember he affirmed that, *unless a strict hand were kept upon the Nation there, they would find it hard to prevent Perjury, one of the most crying Sins in Ireland*. Now to lay an aspersion upon the Subjects of Ireland, being under the Government of the same King with us, how fit this is to be done by a man in that condition that my Lord of Strafford is, I refer to your consideration. Another passage I remember, whereby, in his Defence, he fell upon that Nation, in answer of which I may not omit to do the service I owe to the Commons for whom I am trusted, and that is, talking of an Arbitrary and Tyrannical Government in reference to some orders of the Commons-House in Ireland, he used words to this purpose *You talk of an Arbitrary Government, look upon these Orders, here is an Arbitrary Government*; and yet, when he produced the Orders, they appeared to have so much justice

and discretion in them that he can lay nothing to the charge of them, though in a passion he is not backward to asperse them.

My Lords, if this Lion (to use his own language), now that he is chained and muzzled under the restraint and question of High Treason will here take the boldness to vent this language and express this malignity, how would he do if he were unchained? How would he devour? How would he destroy?

My Lords, something concerns your Lordships; your Lordships remember that he was not backward in his own answer *to fix a Charge of High Treason upon the Lords of the Great Council*, and howsoever he hath affirmed this day, I must open it again, that the charge of the Seven and Twentieth Article he fixes in his Answer to be *by consent of the Lords of the Great Council*, though he hath since recanted it, and yet you have heard him allege that he will stand and fall by the truth of his answer.

My Lords, I am now at an end. You have my Lord of Strafford here questionèd for High Treason, for going about to subvert the Fundamental Laws of both Kingdoms in defence whereof your noble Ancestors spent their Lives and Bloods. My Lords, you are the Sons of those Fathers, and the same Blood runs in your veins that did in theirs, *and I am confident you will not think him fit to live that goes about to destroy that which protects your Lives and preserves your Estates and Liberties*

My Lords, you have the complaints of three Kingdoms presented before you against this great person, whereby your Lordships perceive that a great storm of distemper and distraction hath been raised that threatens the ruin and destruction of them all.

The Commons with much pain and diligence, and to their great expense, have discovered the Jonah that is the occasion of this Tempest.

They have still and will discharge their Consciences (as much as in them lies) to cast him out of the Ship and allay this Tempest.

They expect, and are confident your Lordships will perfect the work, and that with expedition, lest with the continuance of the Storm both Ship and Tackling, and Mariners, both Church and Commonwealth be ruined and destroyed.

It may be here noted that Mr. Glyn's arguments were mostly either vituperative or of the 'ad captandum' order, and that though they advanced to great lengths in those respects, they were very far from proving *the Crime alleged* against Strafford. Further, it may without fear of contradiction be observed, that this was not an occasion whereon the serpent was more subtle than all the beasts of the field, for Strafford's adroitness in founding his argument so as to secure every coign of vantage for himself, was well matched by that wherewith Glyn, while addressing himself in ostensibly the most courteous terms towards the King's Prerogative, contrived to covertly indicate the danger that would attach to the Peers themselves, as the direct consequence of the assertion of that Prerogative, should they fail to administer to Strafford that justice which he asserted the circumstances demanded, and he thus at one and the same time angled for their "fear" and their "favour."

It is also to be observed that Mr. Glyn made direct reference to the Petition of Right—that formidable weapon which, as we have seen, largely owed its existence to the efforts of Strafford himself—and thus warranted the remarks attested by Rushworth in his Preface that "all the Laws comprised and renewed in that Petition of Right were the most invenomed arrows that gave him his mortal wound."

The whole trend of the Speech may fairly be viewed by any impartial reader, as lending itself directly to the assertion that, if it needed a text for support, the most apposite would certainly be "Killing no Murder"—though, be it added, this cannot in any sense operate to excuse the faults of Strafford.

Mr. Pym's Speech (which followed that on the part of Mr. Glyn) covering some ten folio pages, is fully set out in Rushworth's Account of the Trial, and the following are extracts therefrom:—

My Lords, many days have been spent in maintenance of the Impeachment of the Earl of Strafford by the House of Commons, whereby he stands charged with High Treason; and your Lordships have heard his Defence with patience, and with as much favour as justice would allow. We have passed through our evidence, and the result of all is this, that it remains clearly proved that the Earl of Strafford hath endeavoured by his Words, Actions and Counsels to subvert the Fundamental Laws of England and Ireland and to introduce an Arbitrary and Tyrannical Government.

This is the envenomed Arrow for which he enquired in the beginning of his replication this day, which hath affected all his blood: This is that intoxicating Cup (to use his own Metaphor) which hath tainted his Judgment and poisoned his Heart: from hence was infused that specifical difference which turned his Speeches, his Actions, his Counsels, into Treason; not cumulative, as he expressed it, as if many misdemeanours could make one Treason; but formally and essentially. It is the end that doth inform Actions, and doth specificate the nature of them, making not only criminal, but even indifferent Words and Actions to be Treason, being done and spoken with a Treasonable intention.

That which is given to me in charge, is, to shew the quality of the offence, how hainous (heinous) it is in the nature, how mischievous in the effect of it, which will best appear if it be examined by that Law to which he himself appealed, that Universal, that Supream (Supreme) Law, *Salus Populi*: This is the Element of all Laws, out of which they are derived, the end of all Laws, to which they are designed, and in which they are perfected. How far it stands in opposition to this Law, I shall endeavour to show in some considerations which I shall present to your Lordships, all arising out of the evidence which hath been opened.

The first is this. It is an offence comprehending all other offences; here you shall find several Treasons, Murthers (Murders), Rapines, Oppressions, Perjuries.

The Earth hath a Seminary virtue, whereby it doth produce all Herbs and Plants, and other Vegetables. There is in this Crime a Seminary of all evils hurtful to a State; and, if you consider

the reasons of it, it must needs be so : the Law is that which puts a difference betwixt good and evil, betwixt just and unjust : if you take away the Law, all things will fall into a confusion, every man will become a Law to himself, which, in the depraved condition of human nature, must needs produce many great enormities. Lust will become a Law, and Envy will become a Law ; Covetousness and Ambition will become Laws ; and, what dictates, what decisions, such Laws will produce, may easily be discerned in the late Government of Ireland : The Law hath a power to prevent, to restrain, to repair evils ; without this all kinds of mischief and distempers will break in upon a State.

It is the Law that doth entitle the King to the Allegiance and Service of his Peoples ; it entitles the People to the Protection and Justice of the King. It is God alone who subsists by himself ; all other things subsist in a mutual dependence and relation. He was a wise man that said that the King subsisted by the field that is tilled ; it is the Labour of the People that supports the Crown : If you take away the Protection of the King, the vigor and cheerfulness of Allegiance will be taken away, though the obligation remain.

The Law is the boundary, the measure betwixt the King's Prerogative and the People's Liberty ; whilst these move in their own orbs, they are a support and a security to one another. The Prerogative a cover and defence to the Liberty of the People, and the People by their Liberty are enabled to be a foundation to the Prerogative, but if these bounds be so removed that they will enter into contestation and conflict, one of these mischiefs must ensue. *If the Prerogative of the King overwhelm the Liberty of the People, it will be turned into Tyranny. If Liberty undermine the Prerogative it will grow into Anarchy.*

The Law is the safeguard, the custody, of all private interest, your Honors, your Lives, your Liberties and Estates are all in the keeping of the Law ; without this, every man hath a like right to anything ; and this is the condition unto which the Irish were brought by the Earl of Strafford : And the reason which he gave for it, hath more mischief in it than the thing itself, *they were a conquered Nation*. There cannot be a word more pregnant and fruitful in Treason than that word is. There are few Nations in the World that have not been conquered, and no doubt but the Conqueror may give what Laws he pleases to those that

are conquered; but if the succeeding pacts and agreements do not limit and restrain that right, what People can be secure? England hath been conquered, and Wales hath been conquered, and, by this reason, will be in little better case than Ireland. If the King, by the right of a Conqueror, gives Laws to his People, shall not the people, by the same reason, be restored to the right of the Conquered, to recover their Liberty if they can? What can be more hurtful, more pernicious to both than such propositions as these? And in these particulars is determined the first consideration.

The second consideration is this; This Arbitrary Power is dangerous to the King's Person, and dangerous to his Crown: it is apt to cherish Ambition, Usurpation and Oppression in great Men, and to beget Sedition and Discontent in the People; and both these have been, and in reason must ever be, causes of great trouble and alteration to Princes and States.

If the Histories of those Eastern Countries be perused, where Princes order their affairs according to the mischievous principles of the Earl of Strafford, loose and observed (absolved) from all rules of Government, they will be found to be pregnant in Combustions, full of Massacres, and of the tragical ends of Princes. If any man shall look into our own Stories in the times when the Laws were most neglected, he shall find them full of commotions, of civil distempers, whereby the Kings that then reigned were always kept in want and distress, the People consumed with Civil Wars; and by such wicked Counsels as these, some of our Princes have been brought to such miserable ends, as no honest heart can remember without horror and earnest prayer that it may never be so again.

The third consideration is this; the Subversion of the Laws, and this Arbitrary Power, as it is dangerous to the King's Person and to his Crown, so it is in other respects very prejudicial to His Majesty in His Honor, Profit and Greatness; and yet these are the Gildings and Paintings that are put upon such Counsels; These are for your Honor, for your Service, whereas in truth they are contrary to both. But if I shall take off this varnish, I hope they shall then appear in their own Native deformity, and therefore I desire to consider them by these Rules.

It cannot be for the Honor of the King that his Sacred Authority should be used in the practice of Injustice and Oppression; that his name should be applied to patronise such horrid crimes as have been represented in evidence against the Earl of Strafford; and yet how frequently, how presumptuously, his Commands, his Letters, have been vouched throughout the course of this Defence? Your Lordships have heard when the Judges do Justice, it is the King's Justice, and this is for his Honor, because he is the fountain of Justice: But when they do Injustice, the offence is their own; but those Officers and Ministers of the King who are most officious in the exercise of this Arbitrary Power, they do it commonly for their advantage, and when they are questioned for it, then they fly to the King's Interest, to his Discretion: And truly my Lords, this is a very unequal distribution for the King, that the dishonor of evil courses should be cast upon him, and they to have the advantage.

The prejudice which it brings to him in regard of his profit, is no less apparent; it deprives him of the most beneficial and most certain Revenues of his Crown, that is the Voluntary Aids and Supplies of his People. His other Revenues consisting of goodly Demeans (Demesnes) and great Manors have by Grants been alienated from the Crown, and are now exceedingly diminished and impaired: But this Revenue, it cannot be sold, it cannot be burdened with any Pensions or Annuities, but comes entirely to the Crown. It is now almost fifteen years since His Majesty had any assistance from his People; and those illegal ways of supplying the King were never pressed with more Violence and Art than they have been in this time; and yet I may, upon very good grounds, affirm that in the last fifteen years of Queen Elizabeth, she received more by the Bounty and Affection of her Subjects than hath come to His Majesty's coffers by all the inordinate and rigorous courses which have been taken. And as those Supplies were more beneficial in the receipt of them, so were they like in the use and employment of them.

Another way of prejudice to His Majesty's profit is this: such Arbitrary Courses exhaust the People, and disable them when there shall be occasion to give such plentiful Supplies, as otherwise they would do. I shall need no other proof of this than the Irish Government under my Lord of Strafford, where the Wealth of the Kingdom is concerned, by

those horrible Exactions and Burdens, that it is thought the Subsidies lately granted will amount to a little more than half the proportion of the last Subsidies. The two former ways are hurtful to the King's profit, in that respect which they call 'Lucrum Cessans,' by diminishing his Receipts. But there is a third fuller of mischief; and it is in that respect which they call 'Damnum emergens,' by increasing his Disbursements: Such irregular and exorbitant attempts upon the Liberties of the People, are apt to produce such miserable Distractions and Distempers, as will put the King and Kingdoms to such Vast expenses and Losses in a short time, as will not be recovered in many years.

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A fourth consideration is that this Arbitrary and Tyrannical Power, which the Earl of Strafford did exercise in his own Person, and to which he did advise His Majesty, is inconsistent with the Peace, the Wealth, and Prosperity of a Nation. It is destructive to Justice the mother of Peace; to Industry the Spring of Wealth; to Valour, which is the active Virtue whereby the prosperity of a Nation can only be procured, confirmed and enlarged.

It is not only apt to take away Peace, and (but to) put such a Malignity into it as produceth the effects of War. We need no other proof of this but the Earl of Strafford's Government, where the Irish, both Nobility and others, had as little security of their Persons or Estates in this Peaceable time, as if the Kingdom had been under the rage and fury of War.

And as for Industry and Valour, who will take pains for that, which when he hath gotten is not his own? or who will fight for that wherein he hath no other interest but such as is subject to the will of another? The antient encouragement to men that were to defend their Countries was this, that they were to hazard their Person 'pro aris et focis' for their Religion, and for their Houses; But by this Arbitrary way which was practised in Ireland and counselled there, no man had any certainty either of Religion or of his House or anything else to be his own. But besides this, such Arbitrary Courses have an ill operation upon the courage of a Nation by embasing the hearts of the People. A servile condition does for the most part beget in men a slavish temper and disposition. Those that live so much under the Whip and the Pillory and such servile Engines

as were frequently used by the Earl of Strafford, they may have the dregs of valour, sullenness and stubbornness, which may make them prone to mutinies and discontents. But those noble and gallant affections which put men to brave designs and attempts for the preservation or enlargement of a Kingdom, they are hardly capable of. Shall it be Treason to embase the King's coin, though but a piece of twelvepence or sixpence? and must it not needs be the effect of a greater Treason to embase the Spirits of his Subjects, and to set a stamp and character of servitude upon them whereby they shrink disabled to do anything for the service of the King and Commonwealth?

The sixth, *That this crime of Subverting the Laws and introducing an Arbitrary and Tyrannical Government*, is contrary to the Pact and Covenant betwixt the King and his People: That which was spoken of before, was the legal union of Allegiance and Protection; this is a personal union by mutual agreement and stipulation, confirmed by oath on both sides. The King and his People are obliged to one another in the nearest relations; he is a Father and a Child; is called in Law 'pars patris.' He is the Husband of the Commonwealth; they have the same interests; they are inseparable in their condition, be it good or evil. He is the Head. They are the Body. There is such an incorporation as cannot be dissolved without the destruction of both.

When Justice Thorp was in Edward the Third's time condemned to death for Bribery, the reason of that Judgment is given (as being) because he had broke the King's Oath, not that he had broke his own Oath, but he had broken the King's Oath, that solemn and great obligation which is the security of the whole Kingdom: If for a Judge to take a small sum in a private cause was adjudged capital, how much greater was this offence, whereby the Earl of Strafford hath broken the King's Oath in the whole course of his Government in Ireland, to the prejudice of so many of His Majesty's Subjects in their Lives, Liberties and Estates, and to the danger of all the rest.

The seventh is this; it is an offence that is contrary to the end of Government: The end of Government was (is) to prevent oppressions, to limit and restrain the excessive power and violence of great men, to open the passages of Justice with indifferency towards all. This Arbitrary Power is apt to induce and encourage all kinds of insolencies.

Another end of the Government is to preserve men in their Estates, to secure them in their Lives and Liberties; but if this design had taken effect, and could have been settled in England as it was practised in Ireland, no man would have had more certainty in his own than Power would have allowed him, but these two have been spoken of before; there are two more important, which have not yet been touched.

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Under this colour and pretence of maintaining the King's Power and Prerogative, many dangerous practices against the Peace and Safety of the Kingdom have been undertaken and promoted The Earl of Strafford had his first rise of Greatness from this; and in his Apology and Defence, as your Lordships have heard, this hath had a main part.

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The eighth consideration, is the vanity and absurdity of those excuses and justifications which he made for himself, whereof divers particulars have been made in the course of this Defence:

(1) That he is a Counsellor, and might not be questioned for anything which he advised according to his Conscience. The ground is true; there is a liberty belongs to Counsellors, and nothing corrupts Counsels more than Fear. He that will have the privilege of a Counsellor must keep within the just bounds of a Counsellor. Those matters are the proper subjects of Counsel, which in their times and occasions may be good or beneficial to the King or Commonwealth. But such Treasons as these, the Subversion of the Laws, Violation of Liberties, they can never be good or justifiable by any circumstance or occasion; and therefore his being a Counsellor makes his fault much more hainous (heinous), as being committed against a greater Trust, and in a way of much mischief and danger, lest His Majesty's Conscience and Judgment (upon which the whole course and frame of his Government do much depend) should be poisoned and infected with such wicked Principles and Designs. And this he hath endeavoured to do, which by all Laws, and in all Times hath in this Kingdom been reckoned a crime of an high nature.

(2) He labours to interest your Lordships in his Cause, by alleging it may be dangerous to yourselves and your posterity, who by your birth are fittest to be near His Majesty in places of Trust

and Authority, if you should be subject to be questioned for matters delivered in Council. To this was answered, that it was hoped your Lordships would rather labour to secure themselves (yourselves) and their (your) posterity in the exercise of their (your) virtues than of their (your) vices, that so they (you) might together with their (your) own Honor and Greatness preserve the Honor and Greatness both of the King and Kingdom.

(3) Another excuse was this, that whatsoever he hath spoken was out of good intention. Sometimes good and evil, truth and falsehood lye so near together that they are hardly to be distinguished. Matters hurtful and dangerous may be accompanied with such circumstances as may make it appear useful and convenient, and in all such cases good intention will justify evil counsel. But, where the matters propounded are evil in their own nature, such as the matters are wherewith the Earl of Strafford is charged, to break a Public Faith, to subvert Laws and Government, they can never be justified by any intentions, how good so ever they may be pretended.

(4) He allegeth it was a time of great necessity and danger, when such Counsels were necessary for preservation of the State. Necessity hath been spoken of before, as it relates to the Cause; now it is considered as it relates to the person: If there were any necessity, it was of his own making. He, by his evil Counsel, had brought the King into a necessity, and by no rules of Justice can be allowed to gain this advantage by his own fault, as to make that a ground of his justification which is a great part of his offence.

(5) He hath often insinuated this, that it was for His Majesty's service, in maintenance of that Sovereign Power with which he is intrusted by God for the good of his People. The answer is this. No doubt but that Sovereign Power wherewith His Majesty is intrusted for the public good, hath many glorious effects, the better to enable him thereunto. But without doubt this is none of them, that by his own Will, he may lay any Tax or Imposition upon his people without their consent in Parliament. This hath now been five times adjudged by both Houses.

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And, if the Sovereign Power of the King can produce no such effect as this, the allegation of it is an aggravation, and no diminution of his Offence, because thereby he doth labour to interest the King against the just grievance and complaint of his People.

(6) This Counsel was propounded with diverse Limitations and Provisions for securing and repairing the Liberty of the People. This implies a Contradiction to maintain an Arbitrary and Absolute Power, and yet to restrain it with Limitations and Provisions, for even those Limitations and Provisions will be subject to the same absolute power, and to be dispensed in such manner and at such time as itself shall determine: Let the Grievances and Oppressions be never so heavy, the Subject is left without all remedy but at His Majesty's own pleasure.

(7) He allegeth they were but words, and no effect followed. This needs no Answer, but that the Miserable Distempers into which he hath brought all the three Kingdoms will be evidence sufficient; that his wicked Counsels have had such Mischievous Effects within these two or three last years, that many years peace will hardly repair those losses and other great Mischiefs which the Commonwealth hath sustained.

(8) These Excuses have been collected out of the several Parts of his Defence. Perchance some others are omitted, which I doubt not have been answered by some of my Colleagues, and are of no importance either to perplex or to hinder your Lordships' Judgment touching the hainousness (heinousness) of this Crime.

The ninth consideration is this, that if this be a Treason, in the Nature of it it doth exceed all other Treasons in this, that, in the Design and Endeavour of the Author, it was to be a constant and permanent Treason. Other Treasons are transient, as being confined within those particular Actions and Proportions wherein they did consist, and those being past the Treason ceaseth.

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The tenth consideration is this, that as it is a Crime odious in the Nature of it, so it is odious in the Judgment and Estimation of the Law. To alter the settled Frame and Constitution of a Government, is

Treason in any State. The Laws whereby all other parts of a Kingdom are preserved, should (would) be very vain and defective, if they had not a power to secure and preserve themselves.

The Forfeitures inflicted for Treason by our Law, are of Life, Honor and Estate, even all that can be forfeited; and this Prisoner having committed so many Treasons, although he should pay all these Forfeitures, will be still a Debtor to the Commonwealth. *Nothing can be more equal, than that he should perish by the Justice of that Law which he would have Subverted.* Neither will this be a new way of Blood. There are marks enough to trace this Law to the very original of this Kingdom; and, if it hath not been put in Execution, as he allegeth, this 240 years, it was not for want of Law, but, that all that time hath not had a man bold enough to commit such Crimes as these, which is a circumstance much aggravating his Offence, and making him no whit less liable to punishment because he is the only man that in so long a time hath ventured upon such a Treason as this.

It belongs to the charge of another, to make it appear to your Lordships that the Crimes and Offences proved against the Earl of Strafford are High Treason by the Laws and Statutes of this Realm, whose Learning and other Abilities are much better for that Service. But for the time and manner of performing this, we are to resort to the Direction of the House of Commons, having in this, which is already done, despatched all those Instructions which we have received; *and, concerning further Proceedings for clearing all Questions and Objections in Law, your Lordships will hear from the House of Commons in convenient time.*

Pym, notwithstanding the “downrightness” of his speech, appears to have been in no better case than his predecessor was, so far as concerned “proof of the Crime charged,” though he was equally as keen as such predecessor in the “View halloo”—evidently remembering his promise to Strafford “not to leave him while his head was on his shoulders.”

Pym’s speech as above, concluded the proceedings which took place on the 12th April, but, in the meantime, the Commons (on the

10th April) had (as I have already shewn) met in secret conclave, and decided upon forging a more deadly weapon for the despatch of their foe in the shape of the Bill of Attainder—which had passed its second reading—in which connection, it is to be observed that Pym at the close of his Speech, after recognising the necessity for proof on the part of the Commons that the offences charged against Strafford were High Treason by the Laws of the Realm, remarked that this was a duty which must be discharged by others than himself (clearly indicating Counsel), but added that, regarding this, resort must be had to the House of Commons, and darkly hinted at “further proceedings for clearing all Questions and Objections in Law”—doubtless in the hope and belief that the heavy artillery, in the shape of the Bill of Attainder, would effectually shatter the trenches wherein Strafford was sheltering, and render the neutral Lords hostile to his escaping the doom of death which the Commons had designed for him.

The next phase of the Trial, was that a Petition on the part of Strafford, that he might be heard by his Counsel as to whether any of the charges amounted to Treason in point of Law, was granted, despite the strenuous opposition of the Commons, and that the 17th April was appointed for the purpose.

Strafford's Counsel were Richard Lane of Courtenhall in Northampton (the Attorney General to the Prince of Wales), along with Mr. Gardiner and two Juniors, Messrs. Loe and Lightfoot.

When the order of the House of Lords was made for the assignment of these Counsel to Strafford, the Members of the House of Commons were by no means pleased, and some of their number ventured to treat the matter as involving a question of Privilege, but reflection served to demonstrate that to have thus endeavoured to assert their own Privilege, would but have involved an invasion of that of the Lords, and possibly have led to reprisals; so the Commons

(who ought at the very outset to have recognised that Star Chamber Precedents were no “Touchstone” for them) ’een swallowed the imagined insult, and pocketed an affront which had not been offered.

With regard to what followed, I cannot do better than refer to Lord Campbell’s “Lives of the Chancellors.” He tells us that on the day appointed for the argument on the part of Strafford’s Counsel, the Commons resentfully refused to attend as a body, but that almost all the members of that House were present from curiosity, while the Scottish and Irish Commissioners filled the galleries, and the King and his family were in the royal closet—the Prince occasionally showing himself and nodding to his Attorney General. He further informs us that the uninclosed part of Westminster Hall was filled by an immense mass of anxious spectators from the City and from the Provinces, once strongly incensed against Strafford, but now beginning to doubt his guilt and strongly inclined to admire and to pity him. Continuing he adds:—

How insignificant in comparison was the Trial of Warren Hastings, of which we have heard such boastful accounts from our fathers ;

and then remarks

Lane surpassed all expectation. Knowing that a majority of the Peers were now favourable to his Client, and being unchecked by any opponents—although he proposed to carry himself with all content and satisfaction to the House of Commons, and to abstain from touching on the merits of the cause—he said that it was impossible to argue the question of Law without stating the facts (as he understood them) out of which that question arose. Accordingly he took a short, rapid and dexterous view of the evidence adduced. Having then shewn very distinctly and incontrovertibly that none of the charges amounted to Treason under the Statute of Edward III, which provides against ‘Compassing the King’s death, levying War against him, violating his companion, and counterfeiting his Great Seal,’ but is entirely silent with respect to ‘Subverting the fundamental laws of the Kingdom,’ he came to the main point which had been urged by the Commons ‘whether the

Salvo in that Statute as to Parliament declaring a new case of Treason could apply to a Parliamentary Impeachment,' and he argued to demonstration that this power could only be exercised by Parliament in its 'Legislative capacity'—that the House of Lords was then acting judicially according to promulgated law—and that the Earl must be acquitted, unless he could be proved to have done an act which had been *legislatively* declared Treason before it was committed. He finally contended that, assuming the Subversion of the fundamental laws of the Kingdom to be High Treason, one or more acts of injustice, whether maliciously or ignorantly done, could in no sense be called the Subversion of the fundamental laws; for otherwise, possibly 'as many judges, so many traitors,' and all distinction and degrees of offences being confounded, every man who transgresses a Statute may lose his life and his estate, and bring ruin on his posterity. He went over all the Cases supposed to be in point, from that of John de la Pole downwards, showing that in the worst of times, no man had been convicted of Treason except upon a specific charge of having violated one of the express provisions of the Statute of Treason—a Statute made to guard the Subject from constructive and undefined offences against the Government—a Statute which had been the glory of Englishmen, for which respect had been professed by our most arbitrary Sovereigns—but which was now to be swept away by those who avowed themselves the champions of freedom and the reformers of all abuses.

He sat down amid great applause: and after a short address from Mr. Gardiner on the same side—it being as late as between two and three o'clock in the afternoon, the House adjourned.

An acquittal was now considered certain: But (!)

We must hear ring down the curtain on Campbell, and hark back to Rushworth.

Immediately after the conclusion of the argument on the part of Strafford's Counsel, and on the same day, the House of Commons made preparations for the Grand Debate on the third reading of the Bill of Attainder, which was reported for the 19th April—the Commons in their petulance declining to reply to Lane's argument,

on the ground that it was beneath their dignity to dispute with a private lawyer.

On the 19th April, the Commons passed a Resolution "that the endeavour of Thomas Earl of Strafford to subvert the Ancient and Fundamental Laws of the Realm of England and Ireland, and to introduce an Arbitrary and Tyrannical Government against Law in both these Kingdoms is High Treason," and thereafter the further debate on the Bill, *which was to be receipted in Strafford's life blood alone*, was adjourned.

On the 21st April, the Commons again met for the concluding debate, and, as a fitting preliminary to the accomplishment of their design, it was ordered that the doors should be locked and the keys brought up to the Table, and that no man should depart without leave of the assembly. The apple of discord was at once thrown into the debate by Lord Digby (who it will be remembered was one of the Managers of the Impeachment for the Commons) and who addressed them to the following import :

Mr. Speaker,

We are now upon the point of giving (as much as in us lies) the Final Sentence unto Life or Death on a great Minister of State and Peer of this Kingdom, Thomas Earl of Strafford, a name of hatred in the present age by his practices, and fit to be made a Terror to future ages by his punishment.

I have had the honour to be employed by the House in this great business from the first hour that it was taken into consideration : It was matter of great Trust, and I will say with confidence that I have served the House in it both with Industry according to my ability, and with most exact Faithfulness and Secrecy.

And, as I have hitherto discharged my duty to this House and to my Country in the progress of this Great Cause, so I trust I shall do now, in the last period of it, to God and to a Good Conscience.

I do wish the peace of that unto myself, and the blessings of Almighty God to me and my posterity, according as my judgment on the life of this man shall be consonant with my heart, and the best of my understanding in all integrity.

I know well, Mr. Speaker, that by some things I have said of late whilst this Bill was in agitation, I have raised some prejudices against me in the Cause.

Yet some (I thank them for their plain dealing) have been so free as to tell me that I suffered much by the backwardness I have shewn in this Bill of Attainder of the Earl of Strafford, against whom I had been formerly so keen and so active.

Mr. Speaker, I beg of you and the rest but a suspension of Judgment concerning me, till I have opened my heart unto you freely and clearly in the business.

Truly Sir, I am still the same in my opinions and affections, as unto the Earl of Strafford. I confidently believe him the most dangerous Minister, the most insupportable to free subjects that can be charactered.

I believe his practices in themselves have been as High, as Tyrannical, as any Subject ever ventured on, and the malignity of them are hugely aggravated by those rare abilities of his, whereof God hath given him the use, but the Devil the application. In a word, I believe him still that grand Apostate to the Commonwealth who must not expect to be pardoned in this World till he be despatched to the other. And yet, let me tell you, Mr. Speaker, my hand must not be to that despatch: I protest, as my Conscience stands informed, I had rather it were off.

Let me unfold unto you the mystery, Mr. Speaker. I will not dwell much upon justifying unto you my seeming variance at this time from what it was formerly, but by putting you in mind of the difference between Prosecutors and Judges.

How misbecoming that fervour would be in a Judge, which perhaps was commendable in a Prosecutor; Judges we are now, and must put on another Personage.

It is honest and noble to be earnest in order to the discovery of Truth, but when that hath been brought as far as it can to light, our judgment thereupon ought to be calm and cautious.

In Prosecution upon probable grounds, we are accountable only for our industry or remissness, but in Judgment, we are deeply responsible to God Almighty, for it is Rectitude or Obliquity in Cases of Life. The Judge is God's Steward of the party's blood, and must give a strict account for every drop.

But, as I told you, Mr. Speaker, I will not insist long upon the ground of difference in me from what I was formerly.

The truth on it is, Sir, the same ground whereupon I (with the rest of the Five Managers—to whom you first committed the consideration of my Lord Strafford) brought down our Opinion that it was fit he should be accused of Treason: upon the same ground I was engaged with earnestness in his Prosecution, and, had the same ground remained in that force of belief with me—which till very lately it did,—I should not have been tender in his Condemnation. But truly Sir, to deal plainly with you, that ground of our accusation, that spur to our prosecution, and that which should be the basis of my Judgment of the Earl of Strafford, as unto Treason, is, to my understanding, quite vanished away.

Thus it was Mr. Speaker.

His Advising the King to employ the Army of Ireland to reduce England.

This, I was assured would be proved, before I gave my consent to his Accusation. I was confirmed in the same belief during the Prosecution, and fortified in it most of all since Sir Henry Vane's preparatory examination, by the assurances which that worthy Member, Mr. Pym, gave me, that his Testimony would be made convincing by some Notes of what passed at that Junto concurrent with it, which I, ever understanding to be of some other Councillor, you see now prove but a copy of the same Secretary's Notes discovered and produced in the manner you have heard, and those, such disjointed fragments of the venomous part of Discourses, no Results, no Conclusions of Counsels, which are the only things that Secretaries should register, there being no use at all of (for) the other, but to accuse and bring men into danger.

But Sir, this is not that which overthrows the Evidence with me concerning the Army of Ireland, nor yet that all the rest of the Junto upon their Oaths remember nothing of it.

But this Sir, which I shall tell you, is that which works with me, under favour, to an utter overthrow of his Evidence as unto that of the Army of Ireland; before, whilst I was a Prosecutor, and under tie of Secrecy, I might not discover any weakness of the Cause, which now as a Judge I must.

Mr. Secretary (Vane) was examined thrice upon oath at the preparatory Committee.

The first time, he was questioned to all the Interrogatories, and to that part of the Seventh, which concerns the Army of Ireland, he said positively in these words '*I cannot charge him with that,*' but for the rest he desires time to recollect himself, which was granted him.

Some days after, he was examined a second time, and then deposes these words concerning the King's being absolved from Rules of Government and so forth very clearly. But, being pressed to that part concerning the Irish Army, he said again '*I can say nothing to that*'. -

Here we thought we had done with him, till, divers weeks after, my Lord of Northumberland and all others of the Junto denying to have heard anything concerning those words of reducing England by the Irish Army, it was thought fit to examine the Secretary (Vane) once more, and then he deposes these words to have been said by the Earl of Strafford to His Majesty '*You have an Army in Ireland which you may employ here to reduce* (or some word to that sense) *this Kingdom*'.

Mr. Speaker, these are the Circumstances, which I confess with my conscience, thrust quite out of doors that Grand Article of our charge concerning his desperate advice to the King of employing the Irish Army here.

Let not this, I beseech you, be driven to an aspersion upon Mr. Secretary (Vane), as if he should have sworn otherwise than he knew or believed: he is too worthy to do that: only let this much be inferred from it, that he, who twice upon oath, with time of recollection, could not remember anything of such a business, might well a third time mis-remember somewhat in this business; the difference of one letter 'here' for 'there' or 'that' for 'this' quite alters the Case, the latter also being more probable, since it is confessed of (on) all hands that the

Debate then was concerning a War with Scotland; and you may remember that at the Bar he once said to employ there. And thus, Mr. Speaker, I have faithfully given you an account (of) what it is that hath blunted the edge of the Hatchet or Bill with me towards my Lord of Strafford.

This was that whereupon I accused him with a free heart, prosecuted him with an earnestness, and, had it to my understanding been proved, should have condemned him with innocence, whereas now I cannot satisfy my Conscience to do it.

I profess, I can have no notion of anybody's intent to Subvert the Laws treasonably or by force; *and this design of Force not appearing, all his other wicked practices cannot amount so high with me.*

I can find a more easy and more natural spring from whence to derive all his other Crimes, than from an intent to bring in Tyranny and to make his own posterity as well as us slaves, as from Revenge, from Pride, from Avarice, from Passion and Insolence of Nature.

But, had this of the Irish Army been proved, it would have diffused a complexion of Treason over all; it would have been a Withe indeed to bind all those other scattered and lesser branches, as it were, into a Faggot of Treason.

I do not say but that the rest may represent him a man as worthy to die, but perhaps worthier than many a Traitor. I do not say but they may justly direct us to enact that they shall be Treason for the Future, but God keep me from giving Judgment of Death upon any man, and ruin to his posterity, upon a Law made 'a posteriori.' Let the mark be set on the door where the plague is, and then let him that will enter die.

I know, Mr. Speaker, there is in Parliament a double power of Life and Death by Bill, a Judicial power and a Legislative; the measure of the one is what is legally just, of the other what is prudentially and politically fit for the good and preservation of the whole. But these two, under favour, are not to be confounded in Judgment: We must not piece up Want of Legality with Matter of Convenience, nor the Defailance of Prudential Fitness with a Pretence of Legal Justice.

To condemn my Lord of Strafford Judicially as for Treason, my Conscience is not assured that the matter will bear it.

And (if) I do it by the Legislative Power, my reason consultively cannot agree to that, since I am persuaded neither the Lords nor the King will pass the Bill, and consequently that our passing it will be a Cause of great divisions and combustions in the State.

And therefore my humble advice is, that laying aside this Bill of Attainder, we may think of another, *saving only Life*, such as may secure the State from my Lord of Strafford, without endangering it as much by Division concerning his Punishment as he hath endangered it by his Practices.

If this may not be hearkened unto, let me conclude in saying that unto you all, which I have thoroughly inculcated to my own Conscience upon this occasion. *Let every man lay his hand upon his Heart, and sadly consider what we are going to do, (with a breath) either Justice or Murder; Justice on the one side, or Murder heightened and aggravated to its supreamest extent.* For, as the Casuists say, that he who lies with his Sister commits Incest, but he that marries his Sister sins higher by applying God's Ordinance to his Crime, so doubtless *he that commits Murder with the Sword of Justice heightens that Crime to the utmost.*

The danger being so great, and the case so doubtful that I see the best lawyers in diametrical opposition concerning it, let every man wipe his Heart as he does his Eyes when he would judge of a nice and subtle object. The eye, if it be pretincted with any colour, is vitiated in its discerning. Let us take heed of a blood-shotten eye in Judgment.

Let every man purge his Heart clear of all passions (I know this great and wise Body-politic can have none, but I speak to individuals from the weakness which I find in myself); away with personal animosities; away with all flatteries to the people in being—the sharper against him because he is odious to them; away with all fears, lest by sparing his blood they may be incensed; away with all such consideration as that it is not fit for a Parliament that one accused by it of Treason should escape with Life.

Let not former vehemence of any against him, nor fear from thence that he cannot be safe while that man lives, be an ingredient in the Sentence of any one of us.

Of all these corruptives of Judgment, Mr. Speaker, I do before God discharge myself to the uttermost of my power.

And do, with a clear Conscience, wash my hands of this man's blood by this solemn protestation, that my Vote goes not to the taking of the Earl of Strafford's life.

In dealing with the above Speech, Nugent remarks that the conduct of Lord Digby would have entitled him to praise, if it had not been stained by his baseness in secretly purloining a material piece of evidence from the Committee, and afterwards vehemently, impiously and falsely protesting his innocence before God and the Parliament on Oath—the falsity whereof he (Nugent) says was afterwards proved by the finding of a copy (in his own handwriting) of the purloined document among papers taken at Naseby. He adds that Lord Digby's speech in the House of Commons (above set out) was eloquent and powerful, and that it states the whole of the argument against the Bill in the best manner, and further that Lord Digby's opposition to the Bill was the more effective, so long as his motives were regarded as pure and honourable, on account of the unceasing vehemence with which he had previously urged the Impeachment.

Lord Digby's arguments proved, however, unavailing to prevent the third reading of the Bill of Attainder, which was passed by 204 votes to 59 (among the dissentients being Selden, who was a well known champion of Liberty, and Holbourne, who had boldly acted as Counsel for Hampden in the matter of Ship Money), and there-upon Pym was appointed to carry up the Bill to the Lords, and was further ordered to express unto them “that it is a Bill that highly concerns the Commonwealth, *especially in the expediting of it*”, with the result that the Lords appointed Saturday the 24th April, at

8 a.m., for argument in Westminster Hall concerning "the matter of Law in the business of the Earl of Strafford," which appointment was subsequently postponed to Thursday the 29th April—the Solicitor General (St. John) being assigned the duty of maintaining the legal part of the Bill, with Maynard and Glyn as his Assistants.

Meanwhile, on the 24th April, two monster Petitions were addressed by the Citizens of London to the Lords and Commons respectively. These Petitions were in identical terms and bore 20,000 signatures. In them the Petitioners, after setting forth their grievances (for the most part concerning Trade), prayed "that their said grievances may be redressed, the causes of their fears removed, Justice executed upon the said Earl (Strafford) and other incendiaries and offenders, the rather in regard till then the Petitioners humbly conceive neither Religion nor their Lives, Liberties nor Estates can be secured." The Petitions were supported by Posters setting forth the names of those who had voted against the passing of the Bill of Attainder, and declaring them to be "Enemies of Justice," while in their pulpits the Ministers preached and prayed "for the punishment of a great delinquent."

On the 28th April, Mr. Edward Hyde (who was subsequently ennobled by Charles II as Lord High Chancellor) was despatched by the Commons with a message to the Lords "that the House hath received such information as hath moved some fears in them that the Earl of Strafford may have a design to escape; that he hath Ships at Sea at command; and that the Guards about him are weak; therefore to desire their Lordships he may be a close prisoner, and the Guards strengthened." In answer to this message, Hyde bore a statement from the Lords "that their Lordships had heretofore given directions to the Lieutenant of the Tower that he (Strafford) should be a close prisoner, and to take care for a stronger Guard, and will take it into Examination, and give directions as desired."

Guizot, in treating of the position of affairs at this juncture, informs us that on receipt of the intelligence concerning the third reading of the Bill of Attainder, the King only thought how he might save the Earl, no matter at what price, and that he wrote to him saying "Be sure, *on my royal word*, that you shall not suffer either in your life, or in your fortune, or in your honour," and states further that every engine was set at work with all the blind haste of fear and grief, and that the chiefs of the Commons were offered all sorts of concessions—a plot being concerted for the escape of the prisoner, with the result however that the plot injured the negotiations, and the negotiations the plot. He adds the information that Sir William Balfour, the Governor of the Tower, was offered £20,000 and one of Strafford's daughters in marriage for his son if he would aid Strafford's escape, but refused, and further, that being required to receive into the prison, under the name of guards, a hundred chosen men commanded by Captain Billingsly, a discontented Officer, he informed the Commons of the offer and the order.

The letter written by the King to Strafford, referred to in part by Guizot as above, is set out in detail in his "Memoirs of the Court of England during the reign of the Stuarts" by John Heneage Jesse, and reads thus :—

Strafford

The misfortune that is fallen upon you by the strange mistaking and conjunction of these times is such that I must lay by the thought of employing you hereafter in my affairs ; *yet I cannot satisfy in honour or conscience without assuring you now in the midst of all our troubles that, upon the word of a King, you shall not suffer in life, honour or fortune. This is but Justice, and therefore a very mean reward from a master to so faithful and able a servant as you have shown yourself to be ; yet it is as much I conceive as the present times will permit, though none shall hinder me from being*

*Your constant and
faithful friend*

Charles R.

It was upon the faith of this letter, that Strafford assured his wife “allbeit all be done against me that art and malice can devise, with all the rigour possible, yet I am in great inward quietness, and in a strong belief God will deliver me out of all these troubles. The more I look into my case, the more hope I have, and sure, *if there be any honour and justice left, my life will not be in danger.*”

And now arrived the 29th April, the date, which, as we have already seen, was (after adjournment from the original date) appointed by the Lords to receive in Westminster Hall the argument of the Commons “concerning the matter of Law in the business of the Earl of Strafford,” in support whereof the Solicitor General St. John appeared to argue on behalf of the Commons.

His speech, which occupies some 30 folio sheets in Rushworth, is of such a tedious rambling nature, that, to appreciate the actual drift of its arguments, it is best set forth in the following summarised form, which I extract from an account of the Trial published in 1720 by an anonymous author. It should, however, be understood that I have only taken the principal portions of this Summary.

Mr. St. John acquainted their Lordships that the business of the present Conference was to shew what induced the Commons to pass the Bill of Attainder, and first he observed that in several Counties there were different Measures of Punishment for the same offence. That wilful murder in Ireland was Treason, as was the wilful burning of a House or Stack of Grain there: And that in the Isle of Man it was Felony to steal a Hen, and not a Horse; And that the Judges were guided, as they ought to be, by the Laws of their respective Countries,

That here in England, the same Law which enabled inferior Courts to judge according to the Laws already made, empowered the Parliament to make new Laws: but, that though this way were just and legal, this was not the only thing that put the Commons upon it; that they did not intend to make a new Treason and condemn my Lord Strafford upon it, but were moved by other considerations:

(1) That the Commons observed that in all former Ages, where doubts in Law arose of great and general concernments, the Parliament was usually consulted, which was the reason that many Acts were only declarative of the old Law and not introductive of a new one.

(2) That they proceeded this way, to obviate those Scruples and Delays, which, through a disuse of proceedings of this nature since the Statute 1 Henry IV, might have arisen in the method of proceedings, and because of some doubts that might be started whether the Declaratory power of Parliament be taken away, in what manner it was to be made, and by whom, finding not any Attainder of Treason in Parliament for near 200 years but by this way of Bill.

(3) In respect of the Proofs; for, if it should happen that the whole Evidence given was not contained in the Charge, yet such evidence might be made use of in this way of Bill, and it was not requisite there should be any Articles or Charge at all; and so in the case of double Testimony, according to the Statute 1 Edward VI., though that might be insisted on in a Judicial way, yet in case of a Bill, private satisfaction to each man's conscience was sufficient, although no evidence was given at all. *That the proceedings by way of Bill were not to decline their Lordship's justice in the Judicial way in these exigencies of the State, but, to husband Time by silencing those Doubts, they conceived it the speediest and surest way.*

Thus much as to the manner of Proceedings. The next thing he said the Commons took into their consideration, was the Matter and Merits of the Cause.

(1) And he urged first, that my Lord Strafford was guilty of High Treason within the Statute 25 Edward III, by levying War as laid in the 15th Article.

(2) If not of actual levying War, yet he was guilty of Treason in advising and declaring his intention of War, and advising the bringing over the Irish Army, for, though it were not within the

Clause of levying War unless a War was actually levied, yet it came within the first Treason of the Statute 25 Edward III, of compassing the King's death.

(3) If neither of these two single acts were within the Statute 25 Edward III, yet, putting all together that had been proved, there was Treason, within the first Clause, of compassing the King's death, 'et si non prosunt singula, Juncta juvant.'

(4) That he had sessed soldiers on the subject, contrary to the Irish Statute 18 Henry VI.

(5) That he had endeavoured to subvert the fundamental Laws, which was Treason at the Common Law; and that Treasons by the Common Law were not taken away.

(6) *That in case all the rest should fail, it was just and necessary to resort to the Supreme power in Parliament.*

As to the first of the above heads, he admitted that the raising forces and employing them upon a private account either of Revenge or Interest was not a levying War within the Statute, yet it was not so much the act that was to be considered in levying War, but, as in all other Treasons and Felonies, 'quo animo', with what intent or purpose

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and he held that it was a War against the King, when it was intended for the alteration of the Laws or Government.

Then he proceeded to Application, and inferred that the Earl of Strafford, by his Warrant empowering Savil to enforce his arbitrary decrees on Paper Petitions by quartering soldiers upon the Subject, was a sufficient overt act of levying War; and that, although there were not more soldiers than it was thought necessary to enforce obedience, yet, if there were occasion, they were to be reinforced and supported by the whole Army, so that the Army, which was raised and committed to the Earl for defence of the People, was, in breach of the trust reposed in him, turned upon them to their destruction. That if the Earl had armed 2,000 men, and formed them into companies to this end, their Lordships would not have failed to have construed it a levying War, and that this was the same thing with Breach of Trust added to it.

As to the second head, he contended that if their Lordships were not of opinion that a War was actually levied, yet he thought it sufficiently appeared that the Earl had contrived and advised the levying War by the Warrant given to Savil, and advising His Majesty to employ the Irish Army to reduce this Kingdom.

And he asserted that the conspiring to levy War, or to counterfeit the King's coin, was Treason as well as the conspiring the King's death. However, if it was not within the Clause of levying War, yet, according to Stamford, it was within the first Clause of compassing the King's death, as that which necessarily tended to the destruction of King and people, and for this he quoted several authorities.

Upon the third head, he argued that if there were no actual War within the Statute, and if the advising a War was not Treason by itself, yet the addition of his other Words, Counsels and Actions would bring him within the Statute; and he cited several books where words had been adjudged Treason.

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Then he came to Treasons by the Common Law, and insisted that the endeavouring by Words, Counsels and Actions to subvert the Laws was Treason by the Common Law; and that Treasons by Common Law were not taken away by the Statute 25 Edward III, as the whole scope of that Act was only to regulate the Jurisdiction and manner of Trial, and confined the inferior Courts to those Treasons therein specified, but the others that depended upon constructions and necessary inferences were restrained to the Parliament. That the Statute I Henry VI Chapter 10 left it upon the same bottom; that the words in the Statute 1 Mary Chapter I were these, namely, *that no Pains etc. shall ensue for committing any Treason other than such as be in the Statute 25 Edward III ordained and provided, any Act of Parliament or Declaration or Matter to the contrary notwithstanding*. But he held that this Statute only took away all Treasons that had been enacted or declared since the Statute 1 Henry IV, but that the Common Law Treasons were still kept on foot according to the Proviso in the Statute 25 Edward III. But he acknowledged it might be doubted whether the manner of the Parliamentary proceedings were not altered by the Statute 1 Henry IV, that is, whether, since that Statute, the Parliamentary power of Declaration of Treasons, whereby the inferior Courts received Jurisdiction, were not taken away and restrained only to Bill,

and that the Parliamentary Declarations were thereafter to be kept within the Parliament itself and extended no further; for, since the Statute 1 Henry IV, there were not found any such Declarations made, but all Attainders of Treason by Common Law have been by Bill. And if this were so, the Common Law Treasons still remaining, there was the same ground of Reason and Equity for passing a Bill of Treason since the Statute 1 Henry IV, as there was before for declaring it without Bill, *and herein the Legislative Power was not used against my Lord Strafford in the Bill, it was only the Jurisdiction of Parliament.*

But, lest these Reasons of the Commons should not satisfy their Lordships, they (the Commons) had given him farther in command why they conceived in this case the mere Legislative Power might be exercised

(1) From the nature of the offence, in endeavouring to overthrow the Laws, than which he held there could not be a greater.

(2) From the Frame and Constitution of the Parliament, which comprehended the whole Body Politic, and consequently had Power over every one of the Members for the preservation of the whole; and, as in the natural body, where one is distempered, he has power to open a vein, and let out the corrupt blood, or cut off a gangreened member, the like power was lodged in the Body Politic for the preservation of the whole.

The ensuing passages of the speech, I cull from Rushworth, as they are those most frequently cited by Strafford's friendly critics, as tending to prove that the Commons, in thirsting for Strafford's blood, were quite heedless of the means whereby they could secure it.

But my Lords, it hath often been inculcated that Law-makers should imitate the Supreme Law-giver, who commonly warns before he strikes. The law was promulgated before the Judgment of Death for gathering the Sticks, no Law no Transgression.

My Lords, to this Rule of Law is '*Frustra legis auxilium invocat, qui in legem committat*' (let him that breaks the Law invoke its aid in vain); *from the 'Lex Talionis'; he that would not have had others to have a Law, why should he have any himself? Why should not that be done to him, that himself would have done to others?*

It is true we give Law to Hares and Deer, because they be beasts of chase ; It was never accounted either cruelty or foul play to knock Foxes and Wolves on the head as they can be found, because these be Beasts of Prey.

Further, my Lords, most dangerous Diseases, if not taken in time, they kill ; Errors in great things, as War and Marriage, they allow no time for repentance ; it would have been too late to make a Law when there had been no Law.

My Lords, for further answer to this objection, he hath offended against a Law, a Law within the endeavouring to subvert the Laws and Polity of the State wherein he lived, which had so long and with such faithfulness protected his Ancestry, Himself, and his whole Family.

It was not ‘ *Malum quia prohibitum* ’ (Bad because prohibited), it was ‘ *Malum in se* ’ (Bad in itself), against the dictates of the dullest Conscience, against the Light of Nature, they not having a Law, were a Law to themselves.

Besides this, he knew a Law without, that the Parliament in cases of this nature had ‘ *Potestatem vitæ et necis* ’ (Power of Life and Death). Nay, he well knew that he had offended the promulgated and ordinary Rules of Law

* * * * *

My Lords, we receive as just the other Laws and Statutes made by these our Ancestors ; they are the Rules we go by in other Cases, why should we differ from them in this alone ? *These, my Lords, are in part those things which have satisfied the Commons in passing the Bill. It is now left to the Judgment and Justice of your Lordships.*

Rushworth adds the following notes at the conclusion of St. John’s speech :

Upon the close of Mr. St. John’s speech the House adjourned, nor was there one word spoken but by Master St. John, only the Lord Lieutenant (Strafford) used the last part of his Rhetoric, and by a dumb Eloquence ‘ *Manibus ad sidera tensis* ’ (often holding up his hands towards Heaven), all along Mr. St. John’s speech, made his replies with a deep silence.

Upon Friday, April the 30th, he (Strafford) petitioned the Lords to be heard again, alleging that his Lawyers had not fully spoken at their last meeting, but this was denied him, because the House of Commons were to have the last speech, nor were they content to speak again.

St. John's character and methods are severely criticised by Lord Campbell in his "Lives of the Chief Justices of England," where he tells his readers that St. John actually thirsted for Strafford's blood and was resolved to gratify his appetite in violation of all law, human and divine, and adds that probably he had worked himself up into a delusive belief that he was actuated by a regard to the public good, but seems to have been impelled by personal spite arising from some unrevealed affront. He then remarks that the great delinquent (Strafford) who deliberately planned the subversion of public liberty deserved to be severely punished, and that some virtuous men were even of opinion that he ought to expiate his offence with his life, but that all except St. John were for allowing him a fair trial. He further surmises that had it not been for St. John, Strafford would have been acquitted and an entirely different turn given to the history of England. He attributes the design of the Bill of Attainder to St. John, remarking that when, after the Defendant's masterly appeal to his Judges against the attempt to take away his life by new and unknown laws, and the admirable argument of Lane, his Counsel, showing that none of the facts proved, or even alleged against him, amounted in Law to High Treason, he was on the point of being acquitted, St. John thought it necessary to take the matter entirely into his own hands, and therefore required that the Impeachment should be dropped and the Bill of Attainder substituted for it, *whereby the forms of Law and the principles of Justice might more easily be violated.*

How far Lord Campbell was justified in the views expressed by him as above, is perhaps a matter for doubt. The criticism is unquestionably a hard and biting one, and seems to me in several respects to be eminently in accord with the reputation for undue

severity and unfairness which I have on more than one occasion seen apportioned to the lot of the writer thereof, whose works—though showing evidence of much research and learning, and despite their fascinatingly racy style—were described by one of the critics of his day as “adding a new terror to death.” It is, however, only fair to Lord Campbell to add that, in regard to another famous criticism of his upon Lord Ellenborough—one of his predecessors in the office of Lord Chief Justice—a careful study of the Treatise written by the late Mr. Atlay (entitled “The Trial of Lord Cochrane before Lord Ellenborough”) in attempted justification of Lord Ellenborough, in my opinion, reveals the fact that Lord Campbell had considerable warrant for his remarks in that instance.

Nugent considers that St. John’s speech is very superior to that of Pym, and that it is the best vindication of the Bill of Attainder that has ever been put forth.

On Saturday, the 7th May, the King came to the House of Lords, and sent for the Commons, upon whose attendance, he made the following speech to both Houses.

I had not any intention to speak of this business which causes me to come here to-day, which is the great Impeachment of the Earl of Strafford. But it now comes to pass that of necessity I must have part in that Judgment: I am sure you all know that I have been present at the Hearing of this great business from the one end to the other. That which I have to declare unto you is shortly this.

That in my Conscience I cannot condemn him of High Treason. It is not fit for me to argue the business, I am sure you will not expect it. A positive Doctrine best comes out of the mouth of a Prince: Yet I must tell you three great Truths, which I am sure nobody can know as well as myself.

(1) That I never had any intention of bringing over the Irish Army into England, nor ever was advised by anybody so to do.

(2) There never was any Debate before me, neither in Public Council nor in Private Committee, of the disloyalty and disaffection of my English subjects, nor ever had I any suspicion of them.

(3) I was never counselled by any to alter the least of any of the Laws of England, much less to alter all the Laws. Nay, I must tell you this, I think nobody durst be ever so impudent to move me in it, for if they had, I should have put a Mark upon them, and made them such an example that all Posterity should know my intention by it; for my intention was ever to govern according to the Law, and no otherwise.

I desire to be rightly understood. I told you in my Conscience I cannot condemn him of High Treason, yet I cannot say I can clear him of Misdemeanour: Therefore, I hope that you may find a way for *to satisfy Justice and your own fears*, and not to press upon my Conscience. *My Lords, I hope you know what a tender thing Conscience is.* Yet I must declare unto you, that to satisfy my People, I would do great matters. *But in this of Conscience, no fear, no respect whatsoever, shall ever make me go against it.* Certainly, I have not so ill deserved of the Parliament at this time, that they should press me in this tender point, and therefore I cannot expect that you will go about it.

Nay, I must confess, for matter of Misdemeanour, I am so clear in that, that though I will not chalk out the way, yet let me tell you, that I do think my Lord of Strafford is not fit hereafter to serve me or the Commonwealth in any place of Trust, no not so much as to be a High Constable: Therefore, I leave it to you, my Lords, to find some such way as to bring me out of this great strait, and keep yourselves and the Kingdom from such inconveniences. Certainly, he that thinks him guilty of High Treason in his Conscience, may condemn him of Misdemeanour.

Rushworth observes, that, upon the return of the Commons from the House of Lords to their own House, they seemed to be greatly discontented with the King's remarks, and immediately adjourned to the following Monday (2nd May), and, that on that day, Pym made known to the House that desperate designs were in progress both at home and abroad against the Parliament and the Peace of the Nation: that there was an endeavour to disaffect the Army, not only against the proceedings of the Parliament, but to bring them up against the Parliament: that there was a design upon the Tower with a view to effecting the Earl of Strafford's escape, and further, that the

French were despatching forces to their coast, and that consequently fears were entertained for Portsmouth. Pym also informed the House, that it was believed that several persons of rank in attendance upon the King were privy to the foregoing, and that it was therefore necessary that the Ports should be closed, and His Majesty desired to command that no person in attendance upon himself, the Queen or the Prince, should depart without his (the King's) leave *given with the humble advice of Parliament*. Thereupon, the Commons fell into a serious Debate about the position, and on the same day passed a Resolution to make a formal Protest, which was accordingly signed by the Speaker and about 300 Members then present—the wording whereof ran

We the Knights, Citizens and Burgesses of the Commons-House in Parliament, finding, to the grief of our hearts, that the Designs of the Priests and Jesuits and other adherents to the See of Rome have of late been more boldly and frequently put in practice than formerly, to the undermining and danger of the true Reformed Protestant Religion in His Majesty's Dominions established: And finding also that there hath been, and having just cause to suspect there still are, even during the sitting in Parliament, endeavours to subvert the Fundamental Laws of England and Ireland and to introduce the exercise of an Arbitrary and Tyrannical Government by most pernicious and wicked Counsels, Practices, Plots and Conspiracies; and that the long intermission and unhappier breach of Parliaments hath occasioned many illegal taxations, whereby the subjects have been prosecuted and grieved. And that divers innovations and superstitions have been brought into the Church; Multitudes driven out of His Majesty's Dominions; Jealousies raised and fomented between the King and his People: A Popish Army levied in Ireland, and two Armies brought into the bowels of this Kingdom, to the hazard of His Majesty's Royal Person, the consumption of the Revenue of the Crown, and the Treasure of this Realm. And lastly, finding the great causes of Jealousy, that endeavours have been and are used to bring the English Army into a misunderstanding of this Parliament, thereby to incline that Army by force to bring that Army to pass those wicked Counsels, have therefore thought good to join ourselves in a Declaration of our united affections and resolutions, and to make this ensuing Protestation.

I do, in the presence of God, Promise Vow and Protest to maintain and defend, as far as I lawfully may, with my life, power, and estate, the true reformed Protestant Religion expressed in the Doctrine of the Church of England, against all Popery and Popish innovations within this Realm contrary to the said Doctrine; and, according to the Duty of my Allegiance, I will maintain and defend His Majesty's Royal Person and Estate.

As also the Power and Privilege of Parliament, the Lawful Rights and Liberties of the Subject: And every person that shall make this Protestation, in whatsoever he shall do in the lawful pursuance of the same: And, to my power, as far as I lawtully may, I will oppose, and, by all good ways and means, endeavour to bring to condign punishment all such as shall by Force, Practice, Counsels, Plots, Conspiracies or otherwise do anything to the contrary in this present Protestation contained. And further, that I shall, in all just and honourable ways, endeavour to preserve the Union and Peace betwixt the three Kingdoms of England, Scotland and Ireland, and neither for Hope, Fear, or any other Respects, shall relinquish this Promise, Vow and Protestation.

The above Protest was read to the Lords by the Speaker of the Commons, who also himself addressed them upon the subject thereof.

In the meantime, the King's speech to the Houses of Parliament, with which I have already dealt, became common knowledge to the London citizens, who, greatly perturbed thereat, presented further Petitions to both Houses demanding "Justice against the Earl of Strafford."

On Thursday, the 4th May, the Citizens assembled in large numbers outside the Houses of Parliament, and presented a further Petition to the Lords, which was communicated by the Lord Privy Seal to the Commons as being in the following terms

That whereas your Petitioners did yesterday petition for the redress of many grievances and for the execution of Justice upon the Earl of Strafford and other incendiaries, and to be secured from some dangerous Plots and Designs on foot, to which your Lordships have this

day given answer that you have the same under present consideration, Your Petitioners do render humble thanks. But, forasmuch as Your Petitioners understand that the Tower of London is presently to receive a Garrison of men, not of the Hamlets (as they usually were wont to do) but consisting of other persons under the command of a Captain, a great confidant of the Earl of Strafford's, which doth increase their fears of the sudden destruction of King and Kingdom, wherein your Lordships and Posterity are deeply interested, and this is done to make a way for the escape of the Earl of Strafford, the grand Incendiary.

They humbly pray that instant course may be taken for the discovery thereof, and that speedy execution of Justice be done upon the Earl of Strafford.

As the result of a conference between the two Houses, the Lords despatched six Peers of their House to the Tower, to understand what truth there was in this information, and to demand of the Lieutenant who it was that chose those men to be lodged in the Tower, whether he was privy to it himself, and what order he had to receive them, and what Captain was to command them? The Lieutenant answered that he was ignorant as to the two first enquiries, and that as to the third, he had the King's command to receive one hundred men into the Tower with Captain Billingsly to command them, and only to receive such men as the last named should bring to him, but that now, understanding that such was their Lordships wish, he would decline to receive any Guard other than Hamlet men.

On reporting the foregoing to the Commons, the Lords intimated that they were drawing to a conclusion of their consideration of the Bill of Attainder, but were hampered therein by the presence of vast multitudes of people in the vicinity of their House, and desired the Commons to take steps to secure their dispersal, which was accomplished on the people being made acquainted with the before-mentioned Protestation and position.

The same day (4th May), the Earl of Strafford wrote this letter to the King

May it please Your Sacred Majesty,

It hath been my greatest grief in all these troubles to be taken as a person which should endeavour to represent and set things amiss between Your Majesty and Your People, and to give counsels tending to the disquiet of the three Kingdoms.

Most true it is (that this mine own private condition considered) it had been a great madness (since through Your Gracious Favour I was so provided) as not to expect in any kind to mend my fortune, or please my mind more than by resting where Your Bounteous Hands had placed me.

Nay, it is most mightily mistaken; for unto Your Majesty it is well known my poor and humble Advices concluded still in this, that Your Majesty and Your People could never be happy till there was a right understanding betwixt You and them; and that no other means were left to effect and settle this happiness but by the Counsel and Assent of Your Parliament, or to prevent the growing evils of this State but by entirely putting yourself in their last resort upon the loyalty and good affections of your English Subjects.

Yet such is my misfortune, that this Truth findeth little credit, yea the contrary seemeth generally to be believed, and myself reputed as one who endeavoured to make a separation between You and Your People: Under a heavier censure than this, I am persuaded no Gentleman can suffer.

Now I understand the minds of men are more and more incensed against me, notwithstanding Your Majesty hath declared that in Your Princely Opinion I am not guilty of Treason, and that You are not satisfied in Your Conscience to pass the Bill.

This bringeth me in a very great strait; there is before me the ruin of my children and family, hitherto untouched in all the branches of it with any foul crime. Here are before me the many ills which may befall Your Sacred Person and the whole Kingdom, should Yourself and Parliament part less satisfied one with the other than is necessary for the preservation both of King and People. Here are before me the things most valued, most feared by mortal men, Life or Death.

To say Sir, that there hath not been a strife in me, were to make me less man than God knoweth my infirmities make me; and to call a destruction upon myself and young children (where the intentions of my heart at least have been innocent of this great offence) may be believed will find no easy consent from Flesh and Blood.

But with much sadness, I am come to a resolution of that which I take to be best becoming me, and to look upon it as that which is most principal in itself, which doubtless is the prosperity of Your Sacred Person and the Commonwealth, things infinitely before any private man's interest.

And therefore in few words, as I put myself wholly upon the honour and justice of my Peers so clearly as to wish Your Majesty might please to have spared that Declaration of Yours on Saturday last, and entirely to have left me to their Lordships. So now to set Your Majesty's Conscience at liberty, I do most humbly beseech Your Majesty, for prevention of evils which may happen by your refusal to pass this Bill; and by this means to remove (praised be God) I cannot say this accursed (but I confess) this unfortunate thing, forth of the way towards that blessed agreement, which God I trust shall ever establish between You and Your Subjects.

Sir, my consent shall more acquit you herein to God, than all the world can do besides. To a willing man there is no injury done, and as, by God's grace, I forgive all the world with a calmness and meekness of infinite contentment to my dislodging soul: So Sir, to you I can give the life of this World with all the cheerfulness imaginable, in the just acknowledgment of your exceeding favours; and only beg that in your Goodness you would vouchsafe to cast Your Gracious regard upon my poor Son and his three Sisters, less or more, and no otherwise than as their (in present) unfortunate father may hereafter appear more or less guilty of this death. God long preserve Your Majesty.

Your Majesty's most faithful

And Humble Subject

And Servant

STRAFFORD.

Tower, May 4th 1641.

Hume, in reference to this letter, remarks that Strafford, hearing of Charles' irresolution and anxiety, took a very extraordinary step, and wrote a letter in which he entreated the King, for the sake of public peace, to put an end to his unfortunate, however innocent, life, and to quiet the tumultuous people by granting them the request for which they were so importunate ; and, after setting out further passages contained in the letter, says that perhaps Strafford hoped that this unusual instance of generosity would engage the King still more strenuously to protect him, but adds that perhaps Strafford gave his life for lost, and finding himself in the hands of his enemies, and observing that Balfour, the Lieutenant of the Tower, was devoted to the popular party, absolutely despaired of ever escaping the multiplied dangers with which he was every way environed.

He then adds, that we might ascribe this step to a noble effort of disinterestedness, not unworthy the great mind of Strafford, if the measure which he advised had not been, in the event, as pernicious to his master as it was immediately fatal to himself. He further sets out the following statement in a Note

Mr. Carte, in his life of the Duke of Ormond, has given us some evidence to prove that this letter was entirely a forgery of the popular leaders, in order to induce the King to sacrifice Strafford. He tells us that Strafford said so to his son the night before his execution. But there are some reasons why I adhere to the common way of telling this story.

(1) The account of the forgery comes through several hands, and from men of characters not fully known to the public. A circumstance which weakens every evidence. It is a hearsay of a hearsay.

(2) It seems impossible but young Lord Strafford must inform the King, who could not have failed to trace the forgery, and expose his enemies to their merited infamy.

(3) It is not to be conceived but Clarendon and Whitlocke, not to mention others, must have heard of the matter.

(4) Sir George Ratcliffe, in his life of Strafford, tells the Story in the same way that Clarendon and Whitlocke do. Would he also, who was Strafford's intimate friend, never have heard of the forgery? It is remarkable that this life is dedicated or addressed to Young Strafford. Would not he have put Sir George right in so material and interesting a fact?

I venture the opinion that Hume might have added that the letter on its face bears the impress of truth and not of forgery, and was probably, as Nugent (as I shall presently show) considers, written in the expectation that the King would refuse his assent to the Bill.

Rushworth tells us that on Wednesday, the 5th May, 1641, there happened to be a strange hubbub in the City, upon a false alarm that the Parliament House was beset and on fire and the lives of the various members in danger, and that this occasioned such running up and down in a confused manner "that the like hath scarce been seen." His further remarks upon the subject are not altogether devoid of humour, for he says that the Hubbub and Alarm happened upon an occasion when Sir Walter Earl was making a Report to the House of a Plot to blow up the building, and that thereupon some members in the Gallery stood up the better to hear the report, and that Mr. Moyle of Cornwall and Mr. Middleton of Sussex "*two persons of good bigness,*" weighed down a board in the Gallery, *which gave so great a crack, that some Members thought that it was a Plot indeed*; and that upon Sir John Wray saying he smelt gunpowder and hastening back out of the Gallery, some Members and others in fear, running out of the House, frightened people in the Lobby, who ran into the Hall crying out that the Parliament House was falling and the Members slain; and that thereupon, as the people were running in a hurry through the Hall, Sir Robert Mansel drew his sword and bade them stand for shame, as he saw no enemy to hurt the Parliament, nor heard any noise of the House falling, but that none the less some of the people hastened by water from

Westminster, and carried the alarm into London, which occasioned a resort of the people in great multitudes to Westminster to save the Parliament, with the result that a Regiment of the Trained Bands, commanded by Colonel Mainwaring, was instantly armed and marched as far as Covent Garden (beyond their Liberties) to secure the Parliament, but finding the alarm false, returned again.

The Commons, on the same day, proceeded to examine into the particulars concerning the Plot, and to take evidence thereon, with the result that it was held to consist of three heads, first the design upon the Tower, secondly that to engage the Army against Parliament, and thirdly the design to bring in Foreign forces. Of these I deem it only necessary to deal with the first, which Rushworth sets out as follows ; that Captain Billingsly (to whom reference has already been made) being examined upon oath, confessed that he was acquainted with Sir John Suckling (the Captain of one of the King's Ships then at Portsmouth—and I believe an ancestor of the gentleman of the same name, to whom and to John Jervis, Earl St. Vincent the full development of Admiral Nelson's great faculty for seamanship may largely be ascribed) and that Sir John had then lately offered him employment on one of the King's Ships, with the prospect of subsequent employment in Portugal, and that having orders to repair to the Privy Lodgings at Whitehall, he did there receive orders to get 100 men to serve in the Tower under him, and that if he did fail he should answer it with his life ; that afterwards, meeting with Sir John Suckling and acquainting him therewith, Sir John told him he would furnish him with the required number of men. Rushworth further informs us that Sir William Balfour stated that he had a command to receive Captain Billingsly with 100 men into the Tower who should be under his command ; that the Earl of Strafford at that time expostulating with him about his escape, told him he would attempt nothing of that kind without his (Balfours's) privity, and that he should have the King's Warrant for his indemnity, and that the Warrant should be to command him to

remove the Earl of Strafford from the Tower to some other Castle, and he would then take his opportunity to escape ; that he (Balfour) not giving any answer in compliance with the foregoing, the Earl sent again to entreat him to come to him to let him make an escape, saying “without your concurrence it cannot be done, and if you will consent thereunto, I will make present payment of £22,000 (equivalent to at least six times that amount at the present day) besides you shall have a good marriage for your son”, to which he (Balfour) replied that “he was so far from concurring therein that he was not to be further moved in such a thing.” Continuing his account of the evidence, Rushworth says that three other witnesses were examined, who deposed that being desirous of seeing the Earl of Strafford, they were carried to the back door of the Gallery where his lodgings were, and heard him discourse as he was walking with Mr. Slingsby (his Secretary) about his escape as they conceived it, for they heard him say “where is your brother’s ship”, to which he answered in such a place, and that he might be there in three hours if the Lieutenant of the Tower were sure to him ; and that they heard the Earl of Strafford further say that, if the King could have done anything, he would by his Warrant have done it ere then, and would have sent for him to be removed, but that now there was nothing to be thought upon but an escape ; and that they also heard the Earl remark “If this Fort could be guarded two or three months there would aid enough come.”

Armed with the foregoing, the Commons pressed the Lords for the passing of the Bill of Attainder, and in addition, leaving nothing to chance, the members passed an Act *prohibiting their own dissolution without their own consent*—both of which Acts were passed by the Lords on the 7th May.

Hume, in referring to the passing of the Bill of Attainder, writes as follows.

About 80 Peers had constantly attended Strafford's trial ; but such apprehensions were entertained on account of the popular tumults, that only 45 were present when the Bill of Attainder was brought into the House. Yet, of these, 19 had the courage to vote against it. A certain proof that if entire freedom had been allowed, the Bill had been rejected by a great majority.

On Saturday, the 8th May, Mr. Hotham was sent by the Commons with a message to the House of Lords, to desire their Lordships to join with them to move His Majesty for his Consent to the Bill of Attainder, and to urge that the Peace of the Kingdom did much depend upon the execution of that Bill, which had passed both Houses, and accordingly a certain number of the House of Peers were sent unto the King to acquaint him therewith, and also with the Bill for the continuance of the then present Parliament.

Then follows a passage in Rushworth, which is peculiarly apposite to the present time, reading as it does

The House (of Commons) being informed that Ships were ready to put to sea, but that mariners could not be got, it was the same day resolved that a Bill should be drawn *to enable the pressing of Mariners for a certain time—the House being very tender of bringing the way of Pressing into example by a Law.*

Proceeding with his account of the course of events, Rushworth tells us that on Sunday, the 9th May, the King called his Privy Council together at Whitehall, and propounded several scruples unto them concerning the Bill of Attainder, and that some of the Judges and Bishops were present also, to whom His Majesty imparted his doubts and had their opinions thereon ; That in fine, the King gave order for a Commission to empower the Earl of Arundel, the Lord Privy Seal, and two other Lords to give his assent to the Bill for the execution of the Earl of Strafford upon Wednesday following, as also to the other Bill for the continuance of the then present Parliament.

Hume, in dealing with the state of affairs at this particular point, says

After the most violent anxiety and doubt, Charles at last granted a commission to four Noblemen to give the Royal assent in his name to the Bill: flattering himself probably in this extremity of distress, that, as neither his will consented to the deed, nor was his hand immediately engaged in it, he was the more free from all the guilt which attended it. These commissioners he empowered at the same time to give his assent to the Bill which rendered the Parliament perpetual.

Guizot, in relation to the same matter, writes

Charles still resisted (i.e. in reference to the demand for his consent to the Bill of Attainder), thinking himself incapable of such dishonour. He sent for Holles, Strafford's brother in law, and who on this ground, had taken no part in the prosecution. 'What can be done to save him'? he asked with anguish. Holles advised that Strafford should solicit the King for a reprieve, and that the King should go *in person* to present his (Strafford's) Petition to Parliament, in a speech which Holles himself drew up on the spot: At the same time, he (Holles) promised to do all in his power to induce his friends to be satisfied with the Earl's banishment; the matter thus arranged, they parted. Already, it is said, the efforts of Holles had met with some success, when the Queen, ever hostile to Strafford, alarmed at the outbreaks of the people (each day more violent), and moreover, it is reported, fearing from the information of some of her confidants, that, to save his life, the Earl had engaged to reveal all he knew of her intrigues, came and beset the King with her suspicions and terrors. Her alarm was so great that she wished to fly, to return to France, and she was already making preparations for her departure. Moved by the tears of his wife, *incapable of deciding for himself*, Charles first assembled a Privy Council, and then the Bishops. Juxon, Bishop of London, alone counselled him to obey his conscience; all the others, the Bishop of Lincoln (Williams) in particular, an intriguing prelate, long opposed to the Court (and to whom I have already referred in my recital of the iniquities of the Star Chamber) urged him to sacrifice an individual to the Throne, his conscience as a man to his conscience as a King."

Nugent, in treating of the conduct of the Bishops at this juncture, remarks,

Next in guilt to the conduct of Charles, was that of Williams (Bishop of Lincoln) and the other Bishops, with whom was performed the mockery of a consultation on a point of plain and absolute duty. From this hypocrisy Juxon (Bishop of London—who 8 years afterwards attended Charles I himself at the latter's execution) alone was free. To his honour be it remembered that, scorning the sophistry of divided conscience, he told the King that he was bound before God and man to refuse his assent."

Rushworth next informs us that on Monday the 10th May, the Commission (ordered by the King to be issued in favour of the four Noblemen as already detailed) passed the Great Seal accordingly, and the Commons were sent for to the House of Lords to be present at the giving of the Royal Assent to both those Bills, and that on the same day the King sent a message to both Houses that the Irish Army should be instantly disbanded, and that he would that night despatch an express for the expediting thereof, whereupon it was moved "that Mr. Treasurer be desired by the House of Commons to return their humble thanks to His Majesty, and to assure him *that they would make him as glorious a potentate and as rich a Prince as any of his predecessors, if he would continue to take the advice of his Great Council the Parliament along with him in the management of the great affairs of the Kingdom.*" Next, the Earl of Strafford, understanding that the King had passed the Bill of Attainder, humbly petitioned the House of Peers as follows :

Seeing it is the good will and pleasure of God that your Petitioner is now shortly to pay that duty which we all owe to our frail Nature, he shall, in all Christian patience and charity, conform and submit himself to your justice in a comfortable assurance of the great hope laid up for us in the mercy and merits of our Saviour blessed for ever.

Only, he humbly craves to return your Lordships most humble thanks for your noble compassion towards those innocent children,

whom now, with his last blessing, he must commit to the protection of Almighty God, beseeching your Lordships to finish his pious intentions towards them, and desiring that the reward thereof may be fulfilled in you, by him that is able to give above all we are able to ask or think; wherein I trust the Honourable House of Commons will afford their Christian assistance.

And so, beseeching your Lordships charitably to forgive all his omissions and infirmities, he doth very heartily and truly recommend your Lordships to the mercies of our Heavenly Father, and that for his goodness he may perfect you in every work. Amen.

THO. WENTWORTH.

It is worthy of note that, whereas the Earl's letter to the King of the 4th May was signed in his titular name "Strafford," his Petition above bears for signature his Christian name and Surname.

The terms of the Bill of Attainder are replete with interest, so I set them out *in extenso* below:

Whereas the Knights, Citizens and Burgesses of the House of Commons in this present Parliament assembled have in the name of themselves and of all the Commons of England impeached Thomas Earl of Strafford of High Treason for endeavouring to subvert the Ancient and Fundamental Laws and Government of His Majesty's Realms of England and Ireland, and to introduce an Arbitrary and Tyrannical Government against Law in the said Kingdoms, and for exercising a tyrannous and exorbitant power over and against the Laws of the said Kingdoms and the Liberties, Estates and Lives of His Majesty's Subjects; and likewise having by his own authority commanded the laying and assessing of soldiers upon His Majesty's Subjects in Ireland, against their consents, to compel them to obey his unlawful Summons and Orders made upon Paper-Petitions in Causes between Party and Party, which accordingly was executed upon divers of His Majesty's Subjects in a warlike manner within the said Realm of Ireland; and in so doing did Levy war against the King's Majesty and his Liege People in that Kingdom; And also for that he, upon the unhappy dissolution of the last Parliament, did slander the House of Commons to His Majesty, and did counsel and advise His

Majesty that *he was loose and absolved from the Rule of Government and that he had an Army in Ireland by which he might reduce this Kingdom;* for which he deserves to undergo the Pains and Forfeitures of High Treason.

And the said Earl hath been an Incendiary of the Wars between the two Kingdoms of England and Scotland; all which offences have been sufficiently proved against the said Earl upon his Impeachment.

Be it therefore enacted by the King's Most Excellent Majesty, and by the Lords and Commons in this present Parliament assembled, and by the Authority of the same, that the said Earl of Strafford, for the Heinous Crimes and Offences aforesaid stand and be adjudged and attainted of High Treason, and shall suffer such Pain of Death, and incur the Forfeitures of his Goods and Chattels, Lands, Tenements, and Hereditaments, of any Estate of Freehold or Inheritance in the said Kingdoms of England and Ireland, which the said Earl, or any other to his use, or in trust for him, have or had the day of the first sitting of this Parliament, or at any time since.

Provided that no Judge or Judges, Justice or Justices whatsoever shall adjudge or interpret any act or thing to be Treason, nor hear or determine any Treason in any other manner than he or they should or ought to have done before the making of this Act and as if this Act had never been had or made; Saving always unto all and singular Persons, Bodies Politick and Corporate, their Heirs and Successors other than the said Earl and his Heirs, and such as claim from by or under him, all such Right Title and Interest of, in and to all and singular such of the said Lands, Tenements or Hereditaments, as he, they or any of them had before the first day of this present Parliament, anything herein contained to the contrary notwithstanding.

Provided that the passing of this present Act, or his Majesty's Assent thereunto, shall not be any determination of this present Session of Parliament, and all Bills and Matters whatsoever depending in Parliament and not fully enacted and determined, and all Statutes and Acts of Parliament which have their continuance until the end of this present Session of Parliament shall remain, continue, and be in full force as if this Act had not been.

It will be observed from the italicised portion of the Preamble to the Bill—such italics forming part and parcel of the Bill itself—that the main beam upholding the superstructure of such Bill consists of the deductions made by the Commons from the material contained in the Papers given by Sir Henry Vane to his Son and produced by the latter to Pym as already mentioned, and particularly of the inference drawn by them (despite the obvious doubt, to which I have already drawn attention, concerning the phrase “*this Kingdom*”) that the words occurring in such Papers, and reading “*And you have an Army in Ireland, which you may employ to reduce this Kingdom to obedience,*” had reference solely to the Kingdom of England, and not to that of Scotland, which latter would appear to have been an equally capable inference.

I would also call attention to the unusual form of the first Proviso to the Bill, which, it will be noticed, *distinctly refrains from stating that the Act is not to constitute a precedent, and uses instead language which clearly recognises the force of the most potent of Strafford's arguments in answer to his Impeachment, namely, that the charges made against him, even assuming their proof to be established, amounted at the most to Constructive Treason—an offence unknown to the Law.*

The next day after the King's consent to the Bill of Attainder had been obtained, the Secretary of State, Carleton, informed Strafford of that event at his prison in the Tower. Strafford it is stated seemed surprised, and for his only answer exclaimed “*Nolite confidere principibus et filiis hominum quia non est salus in illis*” (Put not your trust in Princes, nor in the sons of men : for in them there is no salvation) but, adds Hume, he was soon able to collect his courage, and prepared himself to suffer the fatal sentence.

Rushworth relates how on the 10th May, the King wrote this letter on behalf of the Earl of Strafford, and sent it by the Prince.

My Lords

I did yesterday satisfy the Justice of the Kingdom by passing the Bill of Attainder against the Earl of Strafford; but Mercy being as inherent and unseparable to a King as Justice, I desire at this time in some measure to shew that likewise, by suffering that unfortunate man to fulfil the Natural course of his life in a close imprisonment; yet so, if ever he make the least offer to escape, or offer directly or indirectly to meddle in any sort of publick business, especially with me, either by Message or Letter, it shall cost him his life without further process: This, if it may be done without the discontentment of my People, will be an unspeakable contentment to me; to which end, as in the first place, I, by this letter, do earnestly desire your Approbation, and to endear it more, have chosen him to carry it that of all your House is most dear to me; So I desire that by a Conference you will endeavour to give the House of Commons contentment, assuring you that the exercise of Mercy is no more pleasing to me than to see both Houses of Parliament consent for my sake that I should moderate the severity of the Law in so important a case.

I will not say that your complying with me in this my intended Mercy shall make me more willing, but certainly t'will make me more cheerful in granting your just grievances. But, if no less than his life can satisfy my People, I must say "Fiat Justitia." Thus, again recommending the consideration of my intention to you, I rest.

Your unalterable and
affectionate friend
Charles, R.

Whitehall, 11th of
May, 1641.

If he must die, it were charity to reprieve him till Saturday.

Some writers have asserted that the remarks appearing as above in the form of a postscript to the King's letter, were added at the request of the Queen (who disliked Strafford), in order to convey a subtle intimation to the Commons to stand firm to their purpose of obtaining Strafford's execution.

This letter (says Rushworth), all written with the King's own hand, and delivered by the hand of the Prince, was twice read in the House, and after serious and sad consideration, the House resolved presently to send twelve of the Peers as Messengers to the King, humbly to signify "that neither of the two intentions expressed in the Letter could with duty in them or without danger to himself, his dearest Consort the Queen, and all the young Princes their children, possibly be advised"; all which being done accordingly, and the reasons shewed to His Majesty, he suffered no more words to come from them, but out of the fulness of his heart, to the observance of Justice, and for the contentment of his People, told them "that what he intended by his Letter with an (*if*) if it might be done without Discontentment of His People: if that cannot be, I say again, the same I writ, 'Fiat Justitia.' My other intention, proceeding out of charity for a few days respite, was upon certain information that his estate was so distracted that it necessarily required some few days for settlement thereof." Whereunto, the Lords answered "that their purpose was to be suitors to His Majesty for favour to be shewed to his (Strafford's) innocent children; and if himself (Strafford) had made any provision for them, the same might hold."

This (adds Rushworth) "was well liking unto His Majesty, who thereupon departed from the Lords." At His Majesty's parting, they offered up into his hands the Letter itself which he had sent, but he was pleased to say "My Lords, what I have written to you I shall be content it be registered by you in your House: In it you see my mind. I hope you will use it to my Honour."

Rushworth supplements the foregoing narrative, by informing us that, upon the return of the Lords from the King, what had transpired was reported to the House by the Lord Privy Seal, and that it was ordered that lines to the above effect should go out with the King's Letter, if any copies of such Letter were dispersed.

Guizot, in relation to the above, remarks that instead of going *in person*, as he had promised Holles, to beg a reprieve of Parliament, the King contented himself with sending a letter by the Prince of Wales. Nugent, however, is much more severe in his review of the situation, and gives vent to some scathing remarks upon the King's conduct, which merit consideration, and are to this effect.

* * * * *

But, in whatever light the conduct of the Managers is to be viewed, upon that of the King there can be but one judgment formed by any man who respects the clear boundaries which divide the most obvious duty from the most unmitigated injustice and perfidy. It may be said to have been an unnecessary severity in the Parliament to adopt a course by which it was proposed to him to become a party to the destruction of his favourite, for acts, many of which he had enjoined, and to all of which he had consented. But nothing can palliate the falsehood and cruelty of Charles, who, rather than have sent Lord Strafford to his fate, ought to have prepared himself to meet any result, even that, if need had been, of sharing it. The merely sacrificing this Minister for acts to which he had been himself a party, was an infamous baseness; the sacrificing him after a letter of assurance that not a hair of his head should suffer, but that he (the King) would risk all and suffer all first, was shameful treachery. The postscript to his Letter to the Lords, pleading for Strafford at the beginning, and at the end delivering him up to death, with an "if he must die t'were charity to reprieve him till Saturday" was unfeeling and cruel. But more base, more treacherous, and more cruel still, was the permitting St. John, in consequence of a half executed design for conciliating the Country party, to continue to lead the prosecution and bring up the Bill as Solicitor General to the King. Who, seeing this, can believe the King to have been at any time in conscience irreconcilable to the project of destroying Strafford? Who, seeing this, but would admit that it gave countenance to the declared purpose of the Commons, and encouragement to them to proceed? Though Strafford knew his Master's duplicity, still, when he wrote to him his famous letter urging him to pass the Bill, he seems to have thoroughly expected that he would resist. This was shown by his exclamation of surprise, and grief, and reproach, when he was told that the King had given way.

Hume, in his review of the character of Charles, does not touch upon any of the incidents to which the latter was a party during Strafford's Trial, but, in dealing with the question of his alleged insincerity, writes,

Some historians have *rashly* questioned the good faith of this Prince : but for this reproach, the most malignant scrutiny of his conduct, which in every circumstance is now thoroughly known, affords not any reasonable foundation. On the contrary, if we consider the extreme difficulties to which he was so frequently reduced, and compare the sincerity of his professions and declarations, we shall avow that probity and honour ought justly to be numbered among his most shining qualities. In every treaty, those concessions which he thought he could not in conscience maintain, he never could, by any motive or persuasion, be induced to make. And though *some* violations of the Petition of Right may *perhaps* be imputed to him, *these are more to be ascribed to the necessity of his situation, and to the lofty ideas of royal prerogative, which, from former established precedents, he had imbibed, than to any failure in the integrity of his principles.*

But, in a subsequent Note, Hume appears to recognise the immensity of the task of proving Charles to have been sincere, for he says

The imputation of insincerity on Charles I, *like most party clamours*, is difficult to be removed ; though it may not here be improper to say something with regard to it. I shall first remark that this imputation seems to be of a later growth than his own age ; and that even his enemies, though they loaded him with many calumnies, did not insist on this accusation. Ludlow, I think, is almost the only parliamentarian, who imputes that vice to him ; and how passionate a writer he is, must be obvious to everyone. *Neither Clarendon, nor any other of the Royalists, even justify him from insincerity ; as not supposing that he had ever been accused of it.* In the second place, his deportment and character in common life was free from that vice ; he was reserved, distant, stately, cold in his address, plain in his discourse, *inflexible in his principles* ; devoid of the caressing, insinuating manners of his son, or the professing talkative humour of his father. The imputation of

insincerity must be grounded on some of his public actions, which we are therefore, in the third place, to examine. . . .

Hume then investigates six specific instances, but, as no one of them has the slightest reference to Strafford's Trial or the Bill of Attainder, I dismiss his further remarks on such subject from my consideration, though I cannot refrain from making allusion to the concluding passage in the Note in question, whereof the wording runs

What a paradox in human affairs, that Henry VIII should have been almost adored in his lifetime, and his memory be respected : while Charles I should by the same people, at no greater distance than a century, have been led to a public and ignominious execution, and his name be ever after pursued by falsehood and by obloquy! *Even at present, an historian who, prompted by his courageous generosity, should venture, though from the most authentic and undisputed facts, to vindicate the fame of that prince, would be sure to meet with such treatment, as would discourage even the boldest from so dangerous, however splendid an enterprise.*

I would add that the italics in the three above quoted passages are mine.

After the passing of the Bill of Attainder, Strafford wrote the following letter to his Secretary (Mr. Guilford Slingsby)

I would not, as the case now stands, for anything you should endanger yourself, being a person in whom I shall put a great part of my future trust; and therefore in any case absent yourself for a time, yet so as I may know where you are, and therefore send your man back that I may know whither to direct anything I have to impart to you, and that presently, and after that let your man come as little about this place as may be: your going to the King is to no purpose: I am lost, my body is theirs, but my Soul is God's: there is little trust in man: God may yet (if it please him) deliver me, and as I shall (in the best way he shall enable me unto) prepare myself for him, so to him I submit all I have: the person you were last withal at Court sent to move that business we resolved upon, which if rightly handled might perchance do something; but you know my opinion in all, and what my belief is in all these things. I should by any means advise you to

absent yourself, albeit never so innocent as you are, till you see what becomes of me; if I live, there will be no danger for you to stay, but otherwise keep out of the way till I be forgotten, and then your return may be with safety. I mean indeed to leave you one in trust for my children, and thank you for your readiness to look after it.

Time is precious, and mine I expect to be very short, and therefore no part of it to be lost. God direct and prosper you in all your ways; and remember there was a person whom you were content to call Master, that did very much value and esteem you, and carried to his death a great stock of his affection for you, as for all your services, so for this your care towards me all this time of my Tryal and Afflictions: and however it be my misfortune to be decryd at present, yet in more equal times, my friends (I trust) shall not be ashamed to mention the Love to their children for their Father's sake.

And now approached the fatal day (the 12th May 1641) for Strafford. He had on the previous night sought permission from the Lieutenant of the Tower that he might speak with Archbishop Laud, who was at that time also a State prisoner in the Tower, but had been told that such permission could only be given under Parliament's orders, and was advised to petition the Parliament accordingly, but this he declined, saying "I have gotten my despatch from them, and will trouble them no more; I am now petitioning an Higher Court, where neither Partiality can be expected, nor Error feared." Then, turning to the Primate of Ireland (the Bishop of Armagh), he remarked, "what I would have spoken to my Lord's Grace of Canterbury is this; you shall desire the Archbishop to lend me his prayers this night, and to give me his blessing when I go abroad to-morrow, and to be in his window, that by my last farewell, I may give him thanks for this, and all other his former favours." The Lord Primate having delivered the message without delay, the Archbishop replied "that in conscience he was bound for the first, and in duty and obligation to the second, but feared his weakness and passion would not lend him eyes to behold Strafford's last departure."

The next morning (12th May), when Strafford set out on his last journey, he said to the Lieutenant, as he approached that portion of the Tower in which the Archbishop Laud was confined, "Though I do not see the Archbishop, give me leave I pray you to do my last observance towards his Rooms." In the meantime, the Archbishop, being warned of Strafford's approach, came to the window, when the Earl, bowing to the ground, said "My Lord, your prayers and your blessing." The Archbishop lifted up his hands and bestowed both, but, overcome with grief, fell to the ground senseless, while Strafford, proceeding a little further, bowed a second time, saying "Farewell my Lord ; God protect your innocency."

Rushworth describes Strafford as marching to the scaffold "more like a General at the head of an Army (as many of the spectators then said) to breathe victory, than like a condemned man to undergo the sentence of death." Rushworth further states that the Lieutenant desired him to take a Coach, for fear the people should rush upon him and tear him in pieces, but that Strafford answered "No, Master Lieutenant, I dare look Death in the face, and I hope the people too ; have you a care that I do not escape, and I care not how I die, whether by the hand of the Executioner, or the madness and fury of the people ; if that give them better content, it is all one to me." Rushworth also tells us that as Strafford went from the Tower to the scaffold his countenance was in a mild posture between dejection and in contrition for sin, and a high courage without the least affectation or disguise ; and that, as he walked on foot, he saluted the people, often putting off his hat to them, sometimes to the right and sometimes to the left hand, being apparelled in a black cloth suit, with white gloves. He also vouches the information that, though at this time there were gathered together on the great open place on Tower Hill, where the scaffold stood, a numerous crowd of people, standing as thick as they could by one another over all that great Hill, insomuch that by a modest

computation they could not be esteemed to be less than 100,000 people, yet, as Strafford went to the scaffold, they uttered no reproachful or reflecting language upon him.

Upon Strafford's arrival at the scaffold upon Tower Hill, there were present on the scaffold the Bishop of Armagh, the Earl of Cleveland, Sir George Wentworth (Strafford's brother), and others of his friends who desired to take leave of him, and also Rushworth himself, who states that he took down Strafford's speech from his own mouth—such speech being to the following effect.

My Lord Primate of Ireland, and my Lords, and the rest of these Noble Gentlemen, it is a great comfort to me to have your Lordships by me this day, because I have been known to you a long time, and I now desire to be heard (in) a few words.

I come here, my Lords, to pay my last Debt to Sin, which is Death; and, through the Mercies of God, to rise again to Eternal Glory.

My Lords, if I may use a few words, I shall take it as a great courtesy from you; I come here to submit to the Judgment that is passed against me; I do it with a very quiet and contented mind; I do freely forgive all the world; a forgiveness not from the teeth outward (as they say) but from my heart. I speak in the presence of Almighty God, before whom I stand, that there is not a displeasing thought that ariseth in me against any man: I thank God, I say truly, my conscience bears me witness, that in all the Honour I had to serve His Majesty, I had not any intention in my heart but what did aim at the joint and individual prosperity of the King and his People; although it be my ill hap to be misconstrued, I am not the first man that hath suffered in this kind. It is a common portion that befalls men in this life: Righteous Judgment shall be hereafter; here, we are subject to Error and Misjudging one another.

One thing I desire to be heard in, and do hope that for Christian Charity's sake I shall be believed. I was so far from being against Parliaments, that I did always think Parliaments in England to be the happy Constitution of the Kingdom and Nation, and the best means

under God to make the King and his People happy: As for my Death, I do here acquit all the World and beseech God to forgive them: In particular, I am very glad His Majesty conceives me not meriting so severe and heavy a punishment as the utmost execution of this sentence; I do infinitely rejoice in it, and in that Mercy of his, *and do beseech God to return him the same that he may find Mercy when he hath most need of it.* I wish this Kingdom all prosperity and happiness in the World: I did it living, and now dying it is my wish.

I profess heartily my apprehension, and do humbly recommend it to you, and wish that every man would lay his hand on his heart, and consider seriously whether the beginning of the people's happiness should be written in *Letters of Blood*: I fear they are in a wrong way; I desire Almighty God that no one drop of my blood rise up in judgment against them.

I have but one word more, and that is for my Religion. My Lord Armagh, I do profess myself seriously faithfully and truly to be an obedient son of the Church of England: In that Church I was born and bred, in that Religion I have lived, and now in that I die; Prosperity and Happiness be ever to it.

It hath been said that I was inclined to Popery: If it be an objection worth the answering, let me say truly from my heart, that since I was twenty-one years of age unto this day, going on 49 years, I never had thought or doubt of the truth of this Religion, nor had ever any the boldness to suggest to me the contrary to my best remembrance. And so, being reconciled to the Mercies of Jesus Christ my Saviour, into whose bosom I hope shortly to be gathered to enjoy eternal happiness which shall never have an end, I desire heartily to be forgiven of every man, if any rash or unadvised words or deeds have passed from me, and desire all your prayers; and so, my Lord, farewell, and farewell all things in this World.

The Lord strengthen my faith, and give me confidence and assurance in the merits of Christ Jesus; I trust in God we shall all meet to live eternally in Heaven, and receive the accomplishment of all Happiness where every tear shall be wiped from our eyes, and sad thoughts from our hearts: And so, God bless this Kingdom, and Jesus have mercy on my soul.

Then, turning himself about, he saluted all the Noblemen, and took a solemn leave of all considerable persons on the Scaffold, giving them his hand. And after that, he said,

Gentlemen, I would say my Prayers, and I entreat you all to pray with and for me.

Then his Chaplain laid the Book of Common Prayer upon the chair before him as he kneeled down, on which he prayed almost a quarter of an hour ; then he prayed as long or longer without a book, and ended with the Lord's Prayer : then, standing up, he spied his brother Sir George Wentworth, and called him to him, and said,

Brother, we must part; remember me to my sister and to my wife, and carry my blessing to my eldest son, and charge him from me that he fear God and continue an obedient son of the Church of England, and that he approve himself a faithful subject to the King, and tell him that he should not have any private grudge or revenge towards any concerning me; and bid him beware to meddle not with Church Livings, for that will prove a moth and canker to him in his Estate ; and wish him to content himself to be a servant to his Country as a Justice of the Peace in his County, not aiming at higher preferments: Carry my blessing also to my daughters Ann and Arabella, charge them to fear and serve God, and he will bless them, not forgetting my little infant that knows neither good nor evil and cannot speak for itself; God speak for it and bless it.

I have nigh done: one stroke will make my wife husbandless, my dear children fatherless, and my poor servants masterless, and separate me from my dear brother and all my friends, but let God be to you and them all in all.

After that, going to take off his doublet, and to make himself unready (undressed) he said

I thank God I am no more afraid of death, nor daunted with any discouragements arising from any fears, but do as cheerfully put off my doublet at this time, as ever I did when I went to bed.

Then he put off his doublet, and wound up his hair with his hands, and put on a white cap.

Then he called

Where is the man that should do this last office (meaning the Executioner), call him to me.

When he came and asked of him forgiveness, Strafford told him he forgave him and all the World. Then kneeling down by the block, he went to prayer again himself, the Bishop of Armagh kneeling on one side, and the Minister (his Chaplain) on the other—to the which Minister, after prayer, he turned himself, and spoke some few words softly, having his hands lifted up, and the Minister closed his hands with his own. Then, bowing himself to the earth to lay his head down on the Block, he told the Executioner that he would first lay down his head to try the fitness of the Block, and take it up again before he laid it down for good and all, and so he did; and, before he laid it down again, he told the Executioner that he would give him warning when to strike by stretching forth his hands, and then laid down his head on the block, stretching out his hands; The Executioner struck off his head at one blow, then took the head up in his hand and showed to it all the people, and said “God save the King.”

The above description of Strafford’s execution is entirely taken from Rushworth.

Green tells us that Strafford died as he had lived, and that, as the axe fell, the silence of the great multitude was broken by a universal shout of joy, that the streets blazed with bonfires, while the bells clashed out from every steeple. He adds,

Many, says an observer, that came to town to see the execution rode in triumph back, waving their hats, and, with all expressions of joy, through every town they went crying “His head is off! His head is off!”

It is a strange coincidence that not only was Strafford born on the 13th day of the month, as already noticed, but he met his fate in the 13th year (12th May 1641) from the date (22nd July 1628) whereon he had deserted the Reform Party.

Guizot writes

Violent acclamations burst forth: Several bands of men spread through the City, celebrating their victory with loud shouts, but others retired silently, filled with doubt and uneasiness as to the justice of the wish they had just seen fulfilled.

Nugent remarks,

Thus fell Lord Strafford; in the circumstances of his death giving to his enemies no advantages over his character. It is truly said of him in the 'Eikon' (the Work entitled 'Eikon Basilike' attributed to the authorship of Charles I—a matter, however, which Hume admits is open to dispute—and which ran through 50 editions in the course of a twelvemonth) 'I looked upon him as a gentleman whose abilities might well make a prince rather afraid than ashamed in the greatest affairs of State,'

Hume, in his comments, says

Thus perished, in the 49th year of his age, the Earl of Strafford, one of the most eminent personages that has appeared in England.

Rushworth, at the conclusion of his account of Strafford's execution, and in dealing with certain other matters, publishes what he terms "The Reflections of King Charles I upon the Earl of Strafford's death." These Reflections—evidently taken from the Eikon above referred to—read as follows:

I looked upon my Lord of Strafford as a gentleman whose great abilities might make a Prince rather afraid than ashamed to employ him in the greatest affairs of State. For these were prone enough to create in him great confidence of undertakings, and this was like enough to betray him to great errors and many enemies, whereof he

could not but contract good store while moving in so high a sphere ; and with so vigorous a lustre he must needs (as the Sun) raise many envious exhalations, which, condensed by a popular odium, were capable to cast a cloud upon the brightest merit and integrity.

Though I cannot, in my judgment, approve all he did, driven (it may be) by the necessities of times and the temper of that people, more than led by his own disposition, to any height and rigour of actions ; yet I could never be convinced of any such criminousness in him as willingly to expose his life to the Stroke of Justice and Malice of his enemies.

I never met with a more unhappy conjuncture of affairs than in the business of that unfortunate Earl, when, between my own unsatisfiedness in Conscience and a necessity (as some told me) of satisfying the importunities of some people, I was persuaded by those that I think wished me well to choose rather what was safe than what seemed just before that inward exactness of Conscience before God. And indeed I am so far from excusing or denying that compliance on my part (for plenary consent it was not) to his destruction, whom in my judgment I thought not by any clear Law guilty of death ; that I never did bear any touch of Conscience with greater regret, which, as a sign of my repentance, I have often with sorrow confessed both to God and man as an act of so sinful frailty that it discovered more a fear of man than of God, whose name and place on earth no man is worthy to bear who will avoid inconveniences of State by acts of so high injustice as no public convenience can expiate or compensate.

I see it is a bad exchange to wound a man's own conscience thereby to salve State Sores ; to calm the Storms of popular discontents by stirring up a tempest in a man's own bosom.

Nor hath God's justice failed in the event and sad consequences to shew the World the fallacy of that Maxim '*Better one man perish (though unjustly) than the People be displeased or destroyed.*'

For in all likelihood, I could never have suffered with my People greater calamities (yet with greater comfort) had I vindicated Strafford's innocency, at least by denying to sign that destructive Bill, according to that justice which my Conscience suggested to me, than I

have done since I granted some men's importunities with so cruel a favour; and I have observed that those who counselled me to sign that Bill have been so far from receiving the rewards of such ingratiations with the people, that no men have been harassed and crushed more than they; he only (Juxon, Bishop of London is referred to) hath been least vexed by them who counselled me not to consent against the vote of my own conscience: I hope God hath forgiven me and them the sinful rashness of that business.

To which, being in my soul so fully conscious, those Judgments God hath pleased to send upon me are so much the more welcome, as a means (I hope) which his mercy hath sanctified so to me as to make me repent of that unjust Act (for so it was to me), and for the future to teach me that the best rule of Policy is to prefer the doing of Justice before all enjoyments, and the peace of my Conscience before the preservation of my Kingdoms.

Nor hath anything more fortified my resolutions against all those violent importunities which since have sought to gain a like consent from me to Acts wherein my Conscience is unsatisfied, than the sharp touches I have had for what passed me in my Lord Strafford's business.

Not that I resolved to have employed him in my affairs against the advice of my Parliament, but I would not have had any hand in his death, of whose guiltlessness I was better assured than any man living could be.

Nor were the crimes objected against him so clear as after a long and fair hearing to give convincing satisfaction to the major part of both houses, especially that of the Lords, of whom scarce a third part were present when the Bill passed that House: And for the House of Commons, many Gentlemen, disposed enough to diminish my Lord of Strafford's greatness and power, yet unsatisfied of his guilt in Law, durst not condemn him to die; who, for their integrity in their Votes, were, by posting their names, exposed to the popular Calumny, Hatred and Fury, which grew then so exorbitant in their clamours for Justice (that is to have both myself and the two Houses vote and do as they would have us) that many ('tis thought) were rather terrified to concur with the condemning party, than satisfied that of right they ought so to do.

And that after Act, vacating the authority of the precedent for future imitation, sufficiently tells the World that some remorse touched even his most implacable enemies as knowing he had very hard measure, and such as they would be very loath should be repeated to themselves.

This tenderness and regret, I find in my soul, for having had any hand (and that very unwillingly, God knows) in shedding one man's blood unjustly (though under the colour and formalities of Justice and pretences of avoiding public mischief) which may, I hope, be some evidence before God and Man to all posterity that I am far from bearing justly the vast load and guilt of all that blood which hath been shed in this unhappy war, which some men will needs charge upon me to ease their own souls, who am, and ever shall be, more afraid to take away any man's life unjustly than to lose my own.

It will be noticed that in the above reflections (assuming them to have been written by him, as Hume considers upon the whole to have probably been the case—though Hallam is quite of the contrary opinion), the King prophetically recognises the validity of the subsequent criticism of his attitude regarding Strafford. To paraphrase Hallam, I would remark that it would have been far better for him in every sense if he had recognised that though "Force" is a difficult opponent, he is an insatiable master.

After the execution of Strafford had taken place, the Commons (so Guizot tells us) were disturbed by the feeling of doubt and uneasiness regarding the justice of that event which pervaded the minds of many. They certainly took active steps to repress any such feeling, for, a Mr. Taylor (who had remarked in the course of a private conversation that a murder had been committed with the Sword of Justice) was expelled from the House of Commons, declared incapable of ever taking his seat again, and sent to the Tower; while the House also not only forbade the circulation of the speech made against the Bill of Attainder by Lord Digby, as already mentioned, and which he had published, but had it burnt by the common hangman.

Before proceeding to offer any comment upon the course of events with which I have dealt at such length, it may be of interest to set out the Act for reversing the Earl of Strafford's Attainder, which was passed by the first Parliament convened by Charles II after his restoration to the Throne of England. The Act runs in these terms :

Whereas Thomas late Earl of Strafford was impeached of High Treason upon pretence of endeavouring to subvert the Fundamental Laws, and called to a public and solemn Arraignment and Tryal before the Peers in Parliament, where he made a particular Defence to every Article objected against him, insomuch that the turbulent party then seeing no hopes to effect their unjust Designs by any ordinary way and method of proceedings, did at last resolve to attempt the Destruction and Attainder of the said Earl by an Act of Parliament to be therefore purposely made to condemn him upon accumulative Treason, none of the pretended crimes being Treason apart, and so could not be in the whole, if they had been proved, as they were not; and also adjudged him guilty of Constructive Treason (that is of levying War against the King) though it was only the Commanding an Order of the Council-Board in Ireland to be executed by a Sergeant at Arms and three or four soldiers, which was the constant practice of the Deputies there for a long time: to the which end, they, having first presented a Bill for this intent to the House of Commons, and finding there more opposition than they expected, they caused a multitude of tumultuous persons to come down to Westminster armed with Swords and Staves, and to fill the Palace-yards and all the approaches to both Houses of Parliament with Fury and Clamor, and to require Justice, speedy Justice against the Earl of Strafford; and, having by those and other undue practices, obtained that Bill to pass the House of Commons, they caused the names of those Resolute Gentlemen, who, in a case of innocent blood, had freely discharged their Consciences, being fifty-nine, to be posted up in several places about the Cities of London and Westminster and styled them 'Straffordians,' and enemies to their Country, hoping thereby to deliver them up to the fury of the People whom they had endeavoured to incense against them, and then procured the said Bill to be sent up to the House of Peers, where

it having sometime rested under great deliberation, at last in a time when a great part of the Peers were absent by reason of the tumults, and many of those who were present protested against it, the said Bill passed the House of Peers; and at length His Majesty the late King Charles I of Glorious Memory granted a Commission for giving His Royal Assent thereunto, which nevertheless was done by His said Majesty with exceeding great sorrow, then and ever remembered by him with unexpressible grief of heart, and out of His Majesty's great Piety he did publicly express it when his own Sacred Life was taken away by the most detestable Traytors that ever were.

For all which Causes be it Declared and Enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons in this present Parliament Assembled, That the Act entitled 'An Act for the Attainder of Thomas Earl of Strafford of High Treason,' and all and every Clause and Article and Thing therein contained, being as aforesaid, is now hereby Repealed, Revoked and Reversed.

And, to the end that Right be done to the Memory of the deceased Earl of Strafford aforesaid, be it further enacted That all Records and Proceedings of Parliament relating to the said Attainder, be wholly cancelled and taken off the File or otherwise Defaced and Obliterated, to the intent the same may not be visible in after ages, or brought into example to the prejudice of any person whatsoever.

Provided that this Act shall not extend to the future questioning of any person or persons, however concerned in this business, or who had any hand in the tumults or disorderly procuring the Act aforesaid, Any thing herein contained to the contrary thereof notwithstanding.

And now I have finished my chronicle of the main facts appertaining to the Trial, it seems fitting that I should hazard some opinions of my own thereon—always remembering Hallam's remarks concerning the momentousness of the period and the warm emotions it still calls forth—in which connection it appears to me that the most inviting method of bestowing criticism on an occasion of this kind, is to examine that of others in the light of the events

which it concerns, and by that means to endeavour to obtain an accurate and impartial survey of the whole field both of fact and comment.

Adopting that course as my measure, I come first to the great work of Rushworth himself. It will be recollected that at the very outset of my journey into this (to me) most fascinating period of history, I called attention to the weighty remarks with which Rushworth prefaces his Account of Strafford's Trial, and, in my way through those remarks, I showed how (to use his own words) "the Author . . . : was purposely placed near the Earl to take in characters (shorthand) whatsoever should be said either against or for him, and to the best of his skill he did impartially put in writing what was said in the Case *pro* and *con* ; he hath not wittingly or willingly omitted the least particle said in the prisoner's defence, either by himself or anybody in his behalf ; he hath not varied the form or manner of his Expressions, being full of Eloquence and pleasing Rhetorick, and excellently adapted to move compassion, both in his Judges, and the numerous assembly of auditors." I may add the information that the learned author was a Barrister of Lincoln's Inn.

There are three other passages in Rushworth's Preface to which I have hitherto refrained from alluding, but which it now seems opportune to set out, namely those following

It may therefore be said in the Maxim of our Government, not much varying the Sense, 'Quod omnes tangit ab omnibus tractari debet' (which I think may be best paraphrased by another equally well known Maxim 'Ex uno disce omnes') *Every man ought doubtless to know his own Case, to understand whether that Great Man (Strafford) was justly accused of such a hainous (heinous) crime ; and whether the Kingdom escaped such a fatal blow as was then alledged by his exemplary fall under the Judgment of the King and Parliament.*

* * * * *

I ought not to anticipate the Reader with anything that happened during this solemn Tryal, nor to point at matter of Law or Fact; *every reader ought to suppose himself present at the Tryal, and to make his own Comments upon the Law and Fact as it appeared; every Professor or Student of the Law may transcribe into his Common Place Book what he shall judge of most use, and every Statesman may do the like in his studies; and every man, great and small, may, if he please, make excellent Moral Reflections upon the Rise, Greatness and Fall of this seeming Fortunate and yet at last Unfortunate Gentleman.*

* * * * *

I wish my Labours in Collecting truly the Matter of Fact may be an occasion to many to make True and Righteous Judgment in this particular Case, so much Controverted, and that from these Matters of Law and Fact, such right measure may be taken that all our future Ministers of State may escape the conjoyned Complaints of the Three Kingdoms against them: and that the Government may be so Administered as shall best conduce to the happiness of the King.

I cannot refrain from here remarking that the language of the immediately preceding paragraph is certainly worthy of the Sybilline Books or the Delphic Oracle, being thoroughly of the “Romanos Poenos victuros esse” order.

In the course of his Dedicatory Epistle to the Earl of Halifax, which precedes the above Preface, Rushworth makes use of the following remarks:

* * * * *

I sometimes doubted that the Dedication of these Papers to your Lordship might be improper, because of your Lordship's descent from the Sister of that great personage (Strafford) whose unhappy Fate is here related. But having well considered that Honor, Truth and Justice have the Supreme Empire in your truly Noble Soul, and that a full and clear Narrative of all the Matters of Fact that occurred in this great Affair, with the Intentions and Constructions of them, as declared from the mouth of your Noble Ancestor (Strafford) himself, is the fairest and justest way to Ages, I conceived it not unfit for your Lordship to favour this true Account of him, *which may protect his Name from the injuries both of Ignorance and Malice.*

* * * * *

And the Character of this your Ancestor (Strafford) is best to be collected from the following Papers. His Letters published by me in the Second Part of my Historical Collections, and his Behaviour in this solemn Tryal here published, discovers the greatness of his Parts, the quickness of his Apprehension, the excellence of his Wit and Eloquence, the contempt he had of Death, and the serene Composure of his mind in that Part of his Life which falls within this History.

I should not have dared to present this Work to your Lordship, so nearly related to this eminent Minister of State (Strafford), if I had not been a Witness to all the Steps of the proceedings in this great Action, and if I had not taken in Characters (Shorthand), as well and truly all that was said for him, as what his Accusers said against him ; *and therefore I can, with great assurance, aver it to be a candid Representation of Matter of Fact, which is all I pretend to publish to the World: and as far as the exactest care could carry me, I have done it so punctually true that I am hopeful there is none can have any just Exception to any part of it.*

* * * * * *

The above constitute the whole of the passages in Rushworth's account of the Trial which contain anything in the nature of criticism or have any bearing thereon, and, if we except his appreciation of the greatness of Strafford's character—which has never been denied—and his remarks concerning Strafford's bearing at his Execution, it will be found that Rushworth throughout maintains the attitude of a faithful chronicler of incident, and steadfastly refrains from any criticism thereof, and that, even in his appreciative remarks of Strafford's ability in his Defence, he carefully refrains from saying more than that "his Expressions being full of Eloquence and pleasing Rhetorick (were) excellently *adapted* to move compassion." It is, however, obvious from the conclusion of the first of the above passages extracted from the Dedicatory Epistle, that one object which Rushworth had in mind in publishing his account of the Trial, was to "protect Strafford's name from injury either from Ignorance or Malice," and this passage therefore affords some clue

to the state of Rushworth's inner mind, as showing that he certainly did not share the vituperative hatred towards Strafford shown by many of those who impeached him, and further, that he considered that the events concerning him were such as not only to place his name (that is his whole character) in jeopardy of successful attack by the ignorant and malicious, but also to constitute, in favour of such character, a protection from that very menace, if (as it is stated on the Title page they are) "faithfully collected and impartially published without observation or reflection." This, I think, sheds light upon the position, and relieves it from the obscurity in which it would otherwise undoubtedly stand, for, in view of the preceding remarks (which do no more than demonstrate the attitude which Rushworth himself admittedly adopts), it is, I think, obvious that Rushworth recognised that the Earl of Strafford was not to be wholly regarded as fitted only to be adorned with those colours which Mr. Pym had mixed for him, and that the immediate means utilised by the Commons for the purpose of obtaining his execution might possibly, in the circumstances of their user, be assailed. More than this, I do not think, can be gathered from Rushworth's work, but thus much may, I consider, reasonably be deduced therefrom—especially if it be remembered that he was a Barrister of an obviously even-minded temperament. I may supplement this by remarking, that the late Edmund Lodge in his "Portraits of Illustrious Personages of Great Britain, with Biographical and Historical Memoirs of their lives and actions" describes him as "a writer not to be suspected of partiality to Wentworth (Strafford)."

Guizot, after recording the circumstances attendant upon Strafford's execution, refrains from comment, but other passages from his work, which I have already cited, show his sympathy towards Strafford. Further passages do but tend to place that sympathy in bolder relief. Thus, in dealing with the position immediately after Strafford's great speech, he writes

Emotion passes away, anger remains! that of Pym and his friends was at its height. They hastened the second reading of the Bill of Attainder. In vain did Selden, the oldest and most illustrious of the defenders of liberty, Holborne, one of Hampden's Counsel in the affair of ship money, and several others, oppose it. It was now the only resource of the party; for they clearly saw that the Lords would not condemn Strafford as Judges and in the name of the Law.

Again, in writing of the King's resistance to the Bill of Attainder, he says

But the hatred of the Commons was inflexible, and more daring than the King's grief: they had foreseen his resistance, and prepared the means of overcoming it. Ever since the Bill of Attainder had been carried to the Upper House, the multitude assembled daily round Westminster Hall, armed with swords, knives and sticks, shouting 'Justice! Justice!' and menacing the Lords who delayed their vote.

Nugent's view is diametrically opposed to that of Guizot. He, in relation to the Bill of Attainder, argues on these lines

Those who voted on the Bill of Attainder had to determine whether they would allow a criminal to escape death because his crime was so great and so complicated that it was difficult to bring it within the bounds of a Statute, and thus show future Ministers a way to baffle Justice: or whether, in order to destroy a powerful enemy to their country, *they should for a time cast loose from the anchorage ground of Law*, and on a capital matter too. Be it remembered, these prosecutors were charged with no ordinary duties, *they were fighting against no ordinary man, and with inferior means*; and, above all, they were fighting a great battle for the liberties of their Country. Thus much for their motives, and for the difficulties and dangers with which on every side they were surrounded.

But, having said this, Nugent proceeds

On the whole, however, it must be admitted that the proceeding by Bill is not capable of any complete vindication. Mercy is never the attribute of great assemblies, and Justice not always. And in this case, much was owed to precedent as well as to Justice; for good

precedent is Justice due to after times. It has often been observed that the strongest practical admission on the part of the promoters of this measure, that they knew the principle to be wrong, was their *proviso that it should not be drawn into precedent*. This has been generally argued upon as if it had been a *proviso against all future Bills of Attainder*, which would be an absurd supposition. The precedent against which in all probability they meant to guard was that of an Act of Attainder brought in pending a trial at Law. But the strongest proof that their principle was wrong was this; that, *in spite of that proviso*, their act was pleaded as a precedent, three years after, for the taking off of Laud; a measure still more repugnant to all notions of legal principle. To treat of it as a legal act would be an idle misuse of terms. The apology for it is that, while Strafford lived, there was no security against Charles's restoring him to power; and that, while he was in power, there was no law in England for the protection of the Subject. The phrase in Oliver St. John's speech, that 'there is no law for wolves and beasts of prey', it would be a solecism in language to call an argument in law. Taken as such, it would have been but insolent and cruel mockery. But it was a fit declaration of the character of an act which was to demolish an authority stronger than the Law, and an authority which it was difficult, without demolishing, to abate. It was on the whole, the case of the most dangerous Minister that England ever knew, destroyed by the most dangerous precedent that an English Parliament ever established.

In regard to this criticism, I would remark that in my view, as already intimated, the Bill of Attainder is careful to refrain from stating that its terms are not to constitute a precedent, and the *Proviso* in question is but a clumsy (though its authors doubtless considered it an adroit) means of begging the whole question raised by the one undeniably meritorious defence put forward by Strafford, namely, that, assuming the proof of all the crimes charged against him, these did but constitute crimes other than Treason, and could not lawfully be treated as amounting to that offence in the aggregate, since that would be to tincture the whole constructively and in a manner unknown to the Law.

Lord Campbell, in his "Lives of the Chief Justices of England," describes St. John's speech on the "lex talionis" above referred to as one of "unparalleled atrocity, which, if Milton had put into the mouth of one of his fallen angels, would have been thought too diabolical."

Jesse, in his "Memoirs of the Court of England during the reign of the Stuarts", tells us

The judgment and ability with which Strafford defended his cause are matters of history. Had he not been foredoomed, his unanswerable arguments and pathetic eloquence would probably have acquitted him. . . . Even his enemies beheld his demeanour, and listened to his eloquence, with admiration. After giving evidence against Strafford, Sir William Pennyman burst into tears.

Edmund Lodge, in his "Portraits of illustrious Personages," remarks

The consequent proceedings against this great man are perhaps better known than any other important feature of English History. The virulent spirit of persecution and injustice by which they were conducted, and the dignified humility, and noble firmness, with which they were endured, produced so many touching circumstances which have found their way through the heart to the memory of the reader, that it would be impertinent to go into any lengthened detail of them. Among them, the horrible feeling of revenge which dictated the impeachment; the treachery and perjury of the testimony of Sir Henry Vane, who disclosed some words of obscure and uncertain import uttered by the Earl at the Council Board, and invented others;

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the shameful artifices practised to intimidate the Crown and the Peers; and the total absence of sufficient evidence to warrant his conviction of high treason, or indeed of any other important public offence, stand prominently forward.

Hume is of course loud in his denunciation of the execution of Strafford, and exclaims

Though his death was loudly demanded as a satisfaction to justice, and an atonement for the many violations of the constitution ; it may safely be affirmed, that the sentence by which he fell, was an enormity greater than the worst of those which his implacable enemies prosecuted with so much cruel industry. The people in their rage had totally mistaken the proper object of their resentment. All the necessities, or more properly speaking, the difficulties, by which the King had been induced to use violent expedients for raising supply, were the result of measures previous to Strafford's favour; and if they arose from ill conduct, he at least was entirely innocent. Even those violent expedients themselves, which occasioned the complaint that the constitution was subverted, had been, all of them, conducted, so far as appeared, without his counsel or assistance. *And whatever his private advice might be, this salutary maxim he failed not, often and publicly, to inculcate in the King's presence, that, if any inevitable necessity ever obliged the Sovereign to violate the laws, this license ought to be practised with extreme reserve, and, as soon as possible, a just atonement be made to the constitution, for any injury which it might sustain from such dangerous precedents.* The first Parliament after the the restoration reversed the Bill of Attainder; and even a few weeks after Strafford's execution, this very Parliament remitted to his children the more severe consequences of his sentence; as if conscious of the violence with which the prosecution had been conducted.

Hallam, who, throughout his great work, treats of the subjects wherewith he deals in a most judicial manner, writes

Those who know the conduct and character of the Earl of Strafford, his abuse of power in the North, his far more outrageous transgressions in Ireland, his dangerous influence over the King's counsels, cannot hesitate to admit, if indeed they profess any regard to the constitution of this Kingdom, that to bring so great a delinquent to justice according to the known process of law, was among the primary duties of the new Parliament. It was that which all, with scarce an exception but among his own creatures (for most of the Court were openly or in secret his enemies), ardently desired; yet which the King's favour and his own commanding genius must have rendered a doubtful enterprise.

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The Articles of Strafford's impeachment relate principally to his conduct in Ireland. For though he had begun to act with violence in the Court of York, as Lord President of the North, and was charged with having procured a commission investing him with exorbitant power, yet he had too soon left that sphere of dominion for the Lieutenantcy of Ireland to give any wide scope for prosecution. But in Ireland it was sufficiently proved that he had arrogated an authority beyond what the Crown had ever lawfully enjoyed, and even beyond the example of former Viceroys of that island, where the disordered state of society, the frequency of rebellions, and the distance from all control, had given rise to such a series of arbitrary precedents, as would have almost excused any ordinary stretch of power. Notwithstanding this, however, when the Managers came to state and substantiate their articles of accusation, though some were satisfied that there was enough to warrant the severest Judgment, yet it appeared to many dispassionate men that, even supposing the evidence as to all of them to be legally convincing, they could not, except through a dangerous latitude of construction, be aggravated into Treason. The Law of England is silent as to conspiracies against itself. St. John and Maynard struggled in vain to prove that a scheme to overturn the fundamental laws and to govern by a standing army, though as infamous as any treason, could be brought within the words of the Statute of Edward III, as a compassing of the King's death. Nor, in fact, was there any conclusive evidence against Strafford of such a design. The famous words imputed to him by Sir Henry Vane, though there can be little reason to question that some such were spoken, seem too imperfectly reported, as well as uttered too much in the heat of passion, to furnish a substantive accusation; *and I should rather find my conviction of Strafford's systematic hostility to our fundamental laws on his correspondence since brought to light, as well as on his general conduct in administration, than on my overt acts proved on his impeachment.* The presumption of history, to whose mirror the scattered rays of moral evidence converge, may be irresistible, when the legal inference from insulated actions is not only technically, but substantially, inconclusive. Yet we are not to suppose that the charges against this Minister appeared so evidently to fall short of High Treason, according to the apprehension of that age, as in later times has usually been taken for granted. Accustomed to the unjust verdicts obtained in cases of

Treason by the Court, the Statute of Edward having been perpetually stretched by constructive interpretations, neither the people nor the lawyers annexed a definite sense to that crime. The Judges themselves, on a solemn reference by the House of Lords for their opinion, whether some of the Articles charged against Strafford amounted to Treason, answered unanimously, that upon all which their Lordships had voted to be proved, it was their opinion the Earl of Strafford did deserve to undergo the pains and penalties of High Treason by Law. And, as an apology, at least, for this judicial opinion, it may be remarked that the fifteenth article of the impeachment, charging him with raising money by his own authority, and quartering troops on the people in Ireland, in order to compel their obedience to his unlawful requisitions (upon which, and one other article, not on the whole matter, the Peers voted him guilty), does, in fact, approach very nearly, if we may not say more, to a substantive Treason within the Statute of Edward III, as a levying war against the King, even without reference to some Irish Acts of Parliament upon which the managers of the impeachment relied. It cannot be extravagant to assert, that if the colonel of a regiment were to issue an order commanding the inhabitants of the district where it is quartered to contribute certain sums of money, and were to compel the payment by quartering troops on the houses of those who refused, in a general and systematic manner, he would, according to a warrantable construction of the Statutes, be guilty of the Treason called levying war on the King; and that, if we could imagine him to do this by an order from the Privy Council or the War office, the case would not be at all altered. On the other hand, a single act of such violence might be (in technical language) trespass, misdemeanour, or felony, according to circumstances; but would want the generality, which, as the Statute has been construed, determines its character to be Treason. It is, however, manifest that Strafford's actual enforcement of his order, by quartering soldiers, was not by any means proved to be so frequently done as to bring it within the line of Treason; and the evidence is also open to every sort of legal objection. But in that age, the rules of evidence, so scrupulously defined since, were either very imperfectly recognised, or continually transgressed. If then Strafford could be brought within the letter of the Law, and if he were also deserving of death for his misdeeds towards the commonwealth, it might be thought enough to justify his condemnation,

although he had not offended against, what seemed to be, the spirit and intention of the Statute. This should, at least, restrain us from passing an unqualified censure on those who voted against him, comprehending undoubtedly the far more respectable portion of the Commons, though only twenty six Peers against nineteen formed the feeble majority on the Bill of Attainder. It may be observed that the House of Commons acted in one respect with a generosity which the Crown had never shown in any case of Treason, by immediately passing a Bill to relieve his children from the penalties of forfeiture and corruption of blood.

It is undoubtedly a very important problem in political ethics, whether great offences against the commonwealth may not justly incur the penalty of death by a retrospective act of the Legislature, which a tribunal restrained by known laws is not competent to inflict. *Bills of Attainder had been by no means uncommon in England, especially under Henry VIII; but generally when the crime charged might have been equally punished by Law. They are less dangerous than to stretch the boundaries of a Statute by arbitrary construction. Nor do they seem to differ at all in principle from those Bills of pains and penalties, which, in times of comparative moderation and tranquillity, have sometimes been thought necessary to visit some unforeseen and anomalous transgression beyond the reach of our penal code. There are many, indeed, whose system absolutely rejects all such retrospective punishment, either from the danger of giving too much scope to vindictive passion, or on some more abstract principle of justice. Those who may incline to admit that the moral competence of the Sovereign power to secure itself by the punishment of a heinous offender, even without the previous warning of law, is not to be denied, except by reasoning which would shake the foundation of its right to inflict punishment in ordinary cases, will still be sensible of the mischief which any departure from stable rules, under the influence of the most public spirited zeal, is likely to produce.*

The Attainder of Strafford could not be justifiable, unless it were necessary; nor necessary, if a lighter penalty would have been sufficient for the public security.

This therefore becomes a preliminary question, upon which the whole mainly turns. It is one which does not seem to admit of a demonstrative answer; but with which we can perhaps deal better

than they who lived at that time. *Their distrust of the King, their apprehension that nothing less than the delinquent Minister's death could insure them from his return to power, rendered the leaders of Parliament obstinate against any proposition of a mitigated penalty.* Nor can it be denied that there are several instances in history, where the favourites of monarchs, after a transient exile or imprisonment, have returned, on some fresh wave of fortune, to mock or avenge themselves upon their adversaries. *Yet the prosperous condition of the popular party, which nothing but intemperate passion was likely to impair, rendered this contingency by no means probable ; and it is against probable dangers that nations should take precautions, without aiming at more complete security than the baffling uncertainties of events will permit.* Such was Strafford's unpopularity, that he could never have gained any sympathy, but by the harshness of his condemnation and the magnanimity it enabled him to display. These have half redeemed his forfeit fame, and misled a generous posterity. It was agreed on all hands that any punishment which the law could award to the highest misdemeanours, duly proved on impeachment, must be justly inflicted. 'I am still the same,' said Lord Digby, in his famous speech against the Bill of Attainder, 'in my opinions and affections, as unto the Earl of Strafford; I confidently believe him to be the most dangerous Minister, the most insupportable to free subjects that can be charactered. I believe him to be still that grand apostate to the Commonwealth, who must not expect to be pardoned in this world till he be despatched to the other. And yet let me tell you, Mr. Speaker, my hand must not be to that despatch.' These sentiments, whatever we may think of the sincerity of him who uttered them, were common to many of those who desired most ardently to see that uniform course of known Law,—which neither the Court's lust of power nor the clamorous indignation of a popular assembly might turn aside. *The King, whose conscience was so deeply wounded by his acquiescence in this Minister's death, would gladly have assented to a Bill inflicting the penalty of perpetual banishment; and this, accompanied, as it ought to have been, by degradation from the rank for which he had sold his integrity, would surely have exhibited to Europe an example sufficiently conspicuous of just retribution.* Though nothing perhaps could have restored a tolerable degree of confidence between Charles and the Parliament, it is certain that his resentment and aversion were much aggravated by the painful compulsion they

had put on him, and that the schism among the constitutional party began from this, among other causes, to grow more sensible, till it terminated in civil war.

But, if we pay such regard to the principles of clemency and moderation, and of adherence to the fixed rules of Law, as to pass some censure on this deviation from them in the attainder of Lord Strafford, we must not yield to the clamorous invectives of his admirers, or treat the prosecution as a scandalous and flagitious excess of party vengeance. Look round the nations of the globe, and say in what age or country would such a man have fallen into the hands of his enemies, without paying the forfeit of his offences against the commonwealth with his life. They who grasp at arbitrary power, they who make their fellow citizens tremble before them, they who gratify a selfish pride by the humiliation and servitude of mankind, have always played a deep stake; and the more invidious and intolerable has been their preeminence, their fall has been more destructive, and their punishment more exemplary. Something beyond the retirement or the dismissal of such Ministers has seemed necessary to 'absolve the Gods,' and furnish history with an awful lesson of retribution. The spontaneous instinct of nature has called for the axe and the gibbet against such capital delinquents. *If, then, we blame, in some measure, the sentence against Strafford, it is not for his sake, but for that of the Laws on which he trampled, and of the Liberty which he betrayed.*

He died justly before God and man, though we may deem the precedent dangerous, and the better course of a magnanimous lenity unwisely rejected; and in condemning the Bill of Attainder, we cannot look upon it as a crime.

It would be difficult, if not impossible, to imagine a more comprehensive criticism than the foregoing, and whether we agree or disagree with its author's tenets, we must bow in admiration of the moral force of his diction and the persuasiveness of his arguments, which to my mind, are such as to enable them to stand with ease the test of any charge of unfair partiality to democratic doctrine.

In an earlier portion of his work from which the above passages are quoted, Hallam, after referring to certain episodes in Strafford's life, as evidenced by his Letters, proceeds

The passages which I have thus largely quoted will, I trust, leave no doubt in any reader's mind that the Earl of Strafford was party in a conspiracy to subvert the fundamental Laws and Liberties of his country. For here are not, as on his trial, accusations of words spoken in heat, uncertain as to proof, and of ambiguous interpretation; nor of actions variously reported, and capable of some explanation; but the sincere unbosoming of the heart in letters never designed to come to light. And if we reflect upon this man's cold-blooded apostasy on the first lure to his ambition, and on his splendid abilities, which enhanced the guilt of that desertion, we must feel some indignation at those who have palliated all his iniquities, and even ennobled his memory with the attributes of patriot heroism. Great he surely was, since that epithet can never be denied without paradox to so much comprehension of mind, such ardour and energy, such courage and eloquence; those commanding qualities of soul, which, impressed upon his dark and stern countenance, struck his contemporaries with mingled awe and hate, and still live in the unfading colours of Vandyke. *But it may be reckoned as a sufficient ground for distrusting anyone's attachment to the English constitution, that he reveres the name of the Earl of Strafford.*

In one of the very earliest of his classic Essays, the renowned Macaulay reviews at length Hallam's *chef d'oeuvre* from which I have so largely quoted, and pays tribute to Mr. Hallam's capacity by remarking

Mr. Hallam is, on the whole, far better qualified than any other writer of our time (the date of the Essay in question being September, 1828) for the office which he has undertaken. He has great industry and great acuteness. His knowledge is extensive, various, and profound. His mind is equally distinguished by the amplitude of its grasp, and by the delicacy of its tact. His speculations have none of that vagueness which is the common fault of political philosophy. On the contrary, they are strikingly practical, and teach us not only the general rule, but the mode of applying it to solve particular cases.

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His work is eminently judicial. Its whole spirit is that of the bench not that of the bar. He sums up with a calm, steady impartiality, turning neither to the right nor to the left, glossing over nothing, exaggerating nothing, while the advocates on both sides are alternately biting their lips to hear their conflicting misstatements and sophisms exposed. On a general survey, we do scruple to pronounce the Constitutional History the most impartial book that we ever read. We think it the more incumbent on us to bear this testimony strongly at first setting out, because, in the course of our remarks, we shall think it right to dwell principally on those parts of it from which we dissent.

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We should probably like Mr. Hallam's book more if, instead of pointing out with strict fidelity the bright points and the dark spots of both parties, he had exerted himself to whitewash the one and to blacken the other. But we should certainly prize it far less. Eulogy and invective may be had for the asking. But for cold rigid justice, the one weight and the one measure, we know not where else we can look.

In his review of Hallam's analytical criticism of the leading events of the reign of Charles I, Macaulay is himself intensely critical, not only of Hallam's work, but also of its subject matter. He opens by saying

The famous proceedings of the third Parliament of Charles, and the tyrannical measures which followed its dissolution, are extremely well described by Mr. Hallam. No writer, we think, has shown, in so clear and satisfactory a manner, that the Government then entertained a fixed purpose of destroying the old Parliamentary constitution of England, or at least reducing it to a mere shadow.

but he immediately adds

We hasten, however, to a part of his work which, though it abounds in valuable information and in remarks well deserving to be attentively considered, and though it is, like the rest, evidently written in a spirit of perfect impartiality, appears to us, in many points, objectionable.

We pass to the year 1640. The fate of the Short Parliament held in that year clearly indicated the views of the King. That a Parliament so moderate in feeling should have met after so many years of oppression is truly wonderful.

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It was fortunate, however, that the King had another opportunity of showing that hatred of the liberties of his subjects which was the ruling principle of all his conduct. The sole crime of the Commons was that, meeting after a long intermission of Parliaments, and after a long series of cruelties and illegal imposts, they seemed inclined to examine grievances before they would vote supplies. For this insolence they were dissolved almost as soon as they met. Defeat, universal agitation, financial embarrassments, disorganisation in every part of the government, compelled Charles again to convene the Houses before the close of the same year. *Their Meeting* (the Long Parliament) *was one of the great eras in the civilised world. Whatever of political freedom exists either in Europe or in America, has sprung, directly or indirectly, from those institutions which they secured and reformed.* We never turn to the annals of those times without feeling increased admiration of the patriotism, the energy, the decision, the consummate wisdom, which marked the measures of that great Parliament, from the day on which it met to the commencement of civil hostilities.

The impeachment of Strafford was the first, and perhaps the greatest blow. The whole conduct of that celebrated man proved that he had formed a deliberate scheme to subvert the fundamental laws of England. Those parts of his correspondence which have been brought to light since his death place the matter beyond a doubt. One of his admirers has, indeed, offered to show 'that the passages which Mr. Hallam has invidiously extracted from the correspondence between Laud and Strafford, as proving their design to introduce a thorough tyranny, refer not to any such design, but to a thorough reform in the affairs of State, and the thorough maintenance of just authority.' We will recommend two or three of these passages to the especial notice of our readers.

He then makes reference to the following instances of Strafford's conduct :

(1) Regarding his attitude on the Judgment given against Hampden concerning Ship Money—wherein he points out that Strafford recommended that Hampden should be “whipt into his senses,” and added “if the rod be so used that it smarts not, I am the more sorry,” and concludes with the words “this is the maintenance of just authority.”

(2) With reference to Strafford’s desire “to make every cause in every court subject to the royal prerogative”—concerning which he remarks “we are really curious to know by what arguments it is to be proved, that the power of interfering in the law-suits of individuals is part of the just authority of the executive government.”

(3) Strafford’s scornful treatment of the limitations imposed by the constitution on the royal prerogative—in relation to which he says “we might quote pages; but we will content ourselves with a single specimen:—‘the debts of the Crown being taken off, you may govern as you please: and most resolute I am that may be done without borrowing any help forth of the King’s lodgings.’”

He then proceeds

Such was the theory of that thorough reform in the State which Strafford meditated. His whole practice, from the day on which he sold himself to the Court, was in strict conformity to his theory. For his accomplices various excuses may be urged, ignorance, imbecility, religious bigotry. But Wentworth had no such plea. His intellect was capacious. His early prepossessions were on the side of popular rights. He knew the whole beauty and value of the system which he attempted to deface. He was the first of the Rats, the first of those Statesmen whose patriotism has been only the coquetry of political prostitution, and whose profligacy has taught Governments to adopt the old maxim of the slave-market, that it is cheaper to buy than to breed, to import defenders from an Opposition than to rear them in a Ministry. He was the first Englishman to whom a peerage was a sacrament of infamy, a baptism into the Communion of corruption. As he was the earliest of the hateful list, so was he also by far the greatest; eloquent, sagacious, adventurous, intrepid, ready of invention,

immutable of purpose, in every talent which exalts or destroys nations preeminent, the lost Archangel, the Satan of the 'apostasy. The title for which, at the time of his desertion, he exchanged a name honourably distinguished in the cause of the people, reminds us of the appellation which, from the moment of the first treason, fixed itself on the fallen Son of the morning,

"Satan;—so call him now.—

His former name

Is heard no more in Heaven."

The defection of Strafford from the popular party contributed mainly to draw on him the hatred of his contemporaries. It has since made him an object of peculiar interest to those whose lives have been spent, like his, in proving that there is no malice like the malice of a renegade. Nothing can be more natural or becoming than that one Turncoat should eulogise another. Many enemies of public liberty have been distinguished by their private virtues. But Strafford was the same throughout. As was the Statesman, such was the Kinsman, and such the Lover. His conduct towards Lord Mountnorris is recorded by Clarendon. For a word which can scarcely be called rash, which could not have been made the subject of an ordinary civil action, the Lord Lieutenant dragged a man of high rank, married to a relative of that Saint about whom he whimpered to the Peers, before a Tribunal of slaves. Sentence of death was passed. Everything but death was inflicted. Yet the treatment which Lord Ely experienced was still more scandalous. That nobleman was thrown into prison, in order to compel him to settle his estate in a manner agreeable to his daughter-in-law, whom, as there is every reason to believe, Strafford had debauched. These stories do not rest on vague report. The historians most partial to the minister admit their truth, and censure them in terms which, though too lenient for the occasion, are still severe. These facts are alone sufficient to justify the appellation with which Pym branded him, 'the wicked Earl.'

In spite of all Strafford's vices, in spite of all his dangerous projects, he was certainly entitled to the benefit of the law ; but of the law in all its rigour ; of the law according to the utmost strictness of the letter, which

killeth. He was not to be torn to pieces by a mob, or stabbed in the back by an assassin. He was not to have punishment meted out to him from his own iniquitous measure. But if justice, in the whole range of its wide armoury, contained one weapon which could pierce him, that weapon his pursuers were bound, before God and man to employ.

. " If he may
Find mercy in the law, 'tis his ; if none,
Let him not seek 't of us."

Such was the language which the Commons might justly use.

Having thus well cemented the foundations whereon to rear his subsequent critical remarks—which are applicable as well to the actors in the tragedy as to the creator of the ‘magnum opus’ wherein their actions are so microscopically examined—Macaulay continues

Did then the articles against Strafford strictly amount to high treason ? Many people, who know neither what the articles were, nor what high treason is, will answer in the negative, simply because the accused person, speaking for his life, took that ground of defence. The Journals of the Lords show that the Judges were consulted. They answered, with one accord, that the articles on which the Earl was convicted, amounted to high treason. This judicial opinion, even if we suppose it to have been erroneous, goes far to justify the Parliament. The Judgment pronounced in the Exchequer Chamber has always been urged by the apologists of Charles in defence of his conduct respecting Ship Money. Yet on that occasion there was but a bare majority in favour of the party at whose pleasure all the magistrates composing the tribunal were removable. The decision in the case of Strafford was unanimous ; as far as we can judge, it was unbiased ; and, though there may be room for hesitation, we think on the whole that it was reasonable. ‘It may be remarked,’ says Mr. Hallam, ‘that the fifteenth article of the impeachment, charging Strafford with raising money by his own authority, and quartering troops on the people of Ireland, in order to compel their obedience to his unlawful requisitions, upon which, and upon one other Article, not upon the whole matter, the

Peers voted him guilty, does, at least, approach very nearly, if we may not say more, to a substantive treason within the Statute of Edward the Third, as a levying of war against the King.' This most sound and just exposition has provoked a very ridiculous reply. 'It should seem to be an Irish construction this,' says an assailant of Mr. Hallam, 'which makes the raising money for the King's service, with his knowledge, and by his approbation, to come under the head of levying war on the King, and therefore to be high treason.' Now, people who undertake to write on points of constitutional law should know, what every attorney's clerk and every forward schoolboy on an upper form knows, that, by a fundamental maxim of our polity, the King can do no wrong; that every court is bound to suppose his conduct and his sentiments to be, on every occasion, such as they ought to be; and that no evidence can be received for the purpose of setting aside this loyal and salutary presumption. The Lords, therefore, were bound to take it for granted that the King considered arms which were unlawfully directed against his people as directed against his own throne.

In relation to the foregoing portion of Macaulay's criticism—which would seem to question in a somewhat covert manner the soundness of Mr. Hallam's views—I would, with deference, submit that such criticism proceeds upon a false premise, since a careful perusal of that part of Hallam's work to which the criticism in question makes reference, will demonstrate conclusively that the latter author was very far from concurring in the opinion expressed by the two learned Judges, as he opens his remarks anent the fifteenth Article of the Impeachment with the words "*And as an apology, at least, for this judicial opinion, it may be remarked etc.,*" and concludes such remarks by saying "*It is however manifest that Strafford's actual enforcement of his order, by quartering soldiers, was not by any means proved to be so frequently done as to bring it within the line of treason; and the evidence is also open to every sort of legal objection;*" and, though he adds "But in that age, the rules or evidence, so scrupulously defined since, were either very

imperfectly recognised or continually transgressed", he is careful to qualify with a double "if" the proposition hazarded in the ensuing passage reading

"If then Strafford could be brought within the letter of the law, and if he were also deserving of death for his misdeeds towards the commonwealth, it might be thought enough to justify his condemnation, although he had not offended against what seemed to be the spirit and intention of the Statute."

Moreover, in a footnote to his remarks concerning the fifteenth Article of the Impeachment, and the Judicial opinion above referred to, Hallam writes

This opinion of the Judges, which is not mentioned by Clarendon, Hume and other common historians, seems to have cost Strafford his life. It was relied on by some Bishops, especially Usher, whom Charles consulted whether he should pass the Bill of Attainder, though Clarendon puts much worse *casuistry* into the mouth of Williams.

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Macaulay deals at considerable length with Hallam's views regarding the Bill of Attainder, and is by no means in unison with such views—witness the following passages.

The remarks of Mr. Hallam on the Bill of Attainder, though, as usual, weighty and acute, do not perfectly satisfy us. He defends the principle, but objects to the severity of the punishment. That, on great emergencies, the State may justifiably pass a retrospective Act against an offender, we have no doubt whatever. We are acquainted with only one argument on the other side, which has in it enough of reason to bear an answer. Warning, it is said, is the end of punishment. But a punishment inflicted, not by a general rule, but by an arbitrary discretion, cannot serve the purpose of a warning. It is therefore useless; and useless pain ought not to be inflicted. This sophism has found its way into several books on penal legislation. It admits, however, of a very simple refutation. In the first place, punishments *ex post facto* are not altogether useless even as warnings. They are warnings to a particular class which stand in

great need of warnings, to favourites and ministers. They remind persons of this description that there may be a day of reckoning for those who ruin and enslave their country in all the forms of law. But this is not all. Warning is, in ordinary cases, the principal end of punishment; but it is not the only end. To remove the offender, to preserve society from those dangers which are to be apprehended from his incorrigible depravity, is often one of the ends. In the case of such a knave as Wild, or such a ruffian as Thurtell, it is a very important end. In the case of a powerful and wicked Statesman, it is infinitely more important; so important, as alone to justify the utmost severity, even though it were certain that his fate would not deter others from imitating his example. At present, indeed, we should think it extremely pernicious to take such a course, even with a worse minister than Strafford, if a worse could exist; for, at present, Parliament has only to withhold its support from a Cabinet to produce an immediate change of hands. The case was widely different in the reign of Charles the First. That Prince had governed during eleven years without any Parliament; and even when Parliament was sitting, had supported Buckingham against its most violent remonstrances.

Mr. Hallam is of opinion that a bill of pains and penalties ought to have been passed; but he draws a distinction less just, we think, than his distinctions usually are. His opinion, so far as we can collect it, is this, that there are almost insurmountable objections to retrospective laws for capital punishment, but that, where the punishment stops short of death, the objections are comparatively trifling. Now the practice of taking the severity of the penalty into consideration, when the question is about the mode of procedure and the rules of evidence, is no doubt sufficiently common. We often see a man convicted of a simple larceny on evidence on which he would not be convicted of burglary. It sometimes happens that a Jury, when there is strong suspicion, but not absolute demonstration, that an act, unquestionably amounting to murder, was committed by the prisoner before them, will find him guilty of manslaughter. But this is surely very irrational. The rules of evidence no more depend on the magnitude of the interests at stake than the rules of arithmetic. We might as well say that we have a greater chance of throwing a size when we are playing for a penny than when we

are playing for a thousand pounds, as that a form of trial which is sufficient for the purposes of justice, in a matter affecting liberty and property, is insufficient in a matter affecting life. Nay, if a mode of proceeding be too lax for capital cases, it is, *a fortiori*, too lax for all others; for in capital cases, the principles of human nature will always afford considerable security. No Judge is so cruel as he who indemnifies himself for scrupulosity in cases of blood, by license in affairs of smaller importance. The difference in tale on the one side far more than makes up for the difference in weight on the other.

If there be any universal objection to retrospective punishment, there is no more to be said. But such is not the opinion of Mr. Hallam. He approves of the mode of proceeding. He thinks that a punishment, not previously affixed by law to the offences of Strafford, should have been inflicted; that Strafford should have been, by Act of Parliament, degraded from his rank, and condemned to perpetual banishment. Our difficulty would have been at the first step, and there only. Indeed we can scarcely conceive that any case which does not call for capital punishment can call for punishment by a retrospective Act. We can scarcely conceive a man so wicked and so dangerous that the whole course of law must be disturbed in order to reach him, yet not so wicked as to deserve the severest sentence, nor so dangerous as to require the last and surest custody, that of the grave. If we had thought that Strafford might be safely suffered to live in France, we should have thought it better that he should continue to live in England, than that he should be exiled by a special Act. As to degradation, it was not the Earl, but the general and the statesman, whom the people had to fear. Essex said, on that occasion, with more truth than elegance, 'Stone dead hath no fellow.' And often during the civil wars the Parliament had reason to rejoice that an irreversible law and an impassable barrier protected them from the valour and capacity of Wentworth.

As a summary of the arguments on the respective merits and demerits of retroactive legislation viewed from abstract principles, Lord Macaulay's critique regarding the Bill of Attainder is no doubt on the whole admirable, but, to my mind, when applied to the circumstances of the present case, it is far from convincing. In

the present, as in his own generation, Lord Macaulay's brilliance as an historical writer stands unquestioned, but I believe I speak correctly when I say, as I do, that in these days his views as an historical critic are not universally accepted, for the reason that they are on occasion apt to be tinged with prejudice and are lacking in breadth of conception—witness his brilliant yet faulty description of the English Squire of the time of Charles II, which has not only been challenged by competent authority, but has even been likened unto a venomous caricature; while exception has also been taken to the virulence of his remarks concerning so unsavoury a personage as Judge Jeffreys of “Bloody Assize” fame.

It seems to me that in the present, as in the earlier instance concerning Mr. Hallam's views regarding the fifteenth Article of the Impeachment, Lord Macaulay has formulated an opinion based on an erroneous premise, and has, in direct contrast to the attitude of Mr. Hallam, allowed himself to be unduly swayed by the facts shewn in the correspondence of Strafford *brought to light subsequent to the latter's death*, and has entirely failed to pay regard to that well known legal axiom *which requires those purporting to act in a judicial capacity, to be governed solely by the evidence actually adduced in the cause, when dealing with the merits or demerits of the latter*. Mr. Hallam, on the contrary, though remarking in the course of his able critique

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I should rather found my conviction of Strafford's systematic hostility to our fundamental laws on his correspondence since brought to light, as well as on his general conduct in administration, than on any overt acts proved on his impeachment.

is careful, in his utterances regarding the ethics of the situation, to distinguish between the “generalities” on the one hand, and the “particular occasion” on the other, and consequently treats as “a

very important problem" that which Lord Macaulay opines imports "difficulty at the first step, and there only."

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Nor is my exception to Lord Macaulay's criticism limited to its scope and form merely when viewed in the light of the concrete occasion. I regard at least one of his "abstract" passages as fundamentally unsound, namely that reading

We often see a man convicted of a simple larceny on evidence on which he would not be convicted of a burglary. It sometimes happens that a jury, when there is strong suspicion, but not absolute demonstration, that an act, unquestionably amounting to murder, was committed by the prisoner before them, will find him guilty of manslaughter. But this is surely very irrational.

a passage which I consider as both in letter and in spirit diametrically opposed to the learned critic's later protest.

Nay, if a mode of proceeding be too lax for capital cases, it is, *a fortiori*, too lax for all others; *in capital cases, the principles of human nature will always afford considerable security.*

J. R. Green, in his "Short History of the English People," remarks:—

The trial of the Earl began in Westminster Hall, and the whole of the House of Commons appeared to support it. The passion which the cause excited was seen in the loud cries of sympathy or hatred which burst from the crowded benches on either side. For fifteen days Strafford struggled with a remarkable courage and ingenuity against the list of charges, and melted his audience to tears by the pathos of his defence. But the trial was suddenly interrupted. Though tyranny and misgovernment had been conclusively proved against him, the technical proof of treason was weak. 'The law of England' to use Hallam's words 'is silent as to Conspiracies against itself,' and treason by the Statute of Edward III was restricted to a levying of war against the King or a compassing of his death. The Commons endeavoured to strengthen their case by bringing forward the Notes of a Meeting of a committee of the Commons (*sic*) in which Strafford had urged the use of his Irish troops 'to reduce this Kingdom'; but the Lords would only

admit the evidence on condition of wholly re-opening the case. Pym and Hampden remained convinced of the sufficiency of the impeachment, but the Commons broke loose from their control, and, guided by St. John and Henry Marten, resolved to abandon these judicial proceedings, and fall back on the resource of a Bill of Attainder. Their course has been bitterly censured by some whose opinion in such a matter is entitled to respect. But the crime of Strafford was none the less a crime that it did not fall within the scope of the Statute of Treasons. It is impossible indeed to provide for some of the greatest dangers which can happen to national freedom by any formal Statute. Even now a Minister might avail himself of the temper of a Parliament elected in some moment of popular panic, and, though the nation returned to its senses, might simply by refusing to appeal to the country govern in defiance of its will. Such a course would be technically legal, but such a Minister would be none the less a criminal. Strafford's course, whether it fell within the Statute of Treasons or no, was from beginning to end an attack on the freedom of the whole nation. In the last resort a nation retains the right of self defence, and the Bill of Attainder is the assertion of such a right for the punishment of a public enemy who falls within the scope of no written law.

I would here state that practically the whole of the italicising shewn in the passages extracted from the writers above referred to is due to my own hand, and that I have adopted that course as a ready and efficacious mode of emphasising the facts and reasons therein appearing.

It will be seen from the foregoing extracts from the criticisms of the writers referred to, that Hallam's remarks concerning the momentousness of the period and the warmth of the emotions it still calls forth, are fully justified. For myself, subject to what I have felt impelled to indite as being in all probability the view of Rushworth, I accept the reasoning of Hallam as being, in the main, more correct than that of any of the other writers whose criticisms I have quoted, but I do not feel that I can accept such reasoning in its entirety, since Hallam appears to my mind to treat the position as one depending for its solution upon the answer given to a single

question, namely, whether the end justified the means employed?—*a problem which he finds no difficulty in resolving in the affirmative.* I would, however, with deference to Hallam's view, submit that the doubtful position in which the Commons found themselves when Strafford had concluded his great speech, coupled with their attitude during the proceedings, shrouds their treatment thereof with an even greater degree of doubt, so far as concerns its validity, from the moral as well as the legal aspect.

It has to be remembered that the Commons had not only chosen their own mode of procedure, had not only brought specific charges against the Earl, but had in addition, as a surcharge upon the whole of those specific charges, and as part and parcel of the Articles containing them, relied upon the cumulative effect of the "words, counsels and actions" alleged, as entitling them to impeach him of High Treason. They were therefore in the position of a combatant who has thrown down his gage of battle, in an arena selected by himself, for a combat *à outrance*, with weapons chosen and provided by himself, and who, towards the termination of the combat, discovers, to his chagrin, that his adversary has seemingly, not only outpointed him, but, being apparently also possessed of the greater staying power, will in all probability prove the victor in the fray, so that he feels compelled to use every means to obtain a suspension of the battle in order to secure his own recuperation and to devise another method of immeshing his opponent.

It is at the present day one of the bulwarks of the English Law in favour of an accused person, that his conviction must be preceded by proof of his guilt beyond all reasonable possibility of doubt, but, in the days of Strafford's Impeachment, this principle, though not unknown to the Law, was on occasion conveniently ignored—and there even existed (as we have seen) precedent for the mulcting in heavy fines of Jurors who were bold enough (their assessors would doubtless have said "rash enough") to vindicate the principle in question by an accused's acquittal. It may, however, be recalled to

the honour of many of the Judges of that period, that Sir Walter Scott in his "Tales of a Grandfather," where he deals so simply and yet so ably with Scottish history, records the fact that the Judges introduced into Scotland by Cromwell after his victory at Dunbar "distributed justice with an impartiality to which the Scottish nation had been entirely a stranger; and which ceased to be experienced from the native judges after the Restoration." Scott does not allow this matter to pass without jocularly, for he adds 'the peculiar rectitude of the men employed by Cromwell being, pointed out to a learned judge in the beginning of the next century, his lordship composedly answered 'Devil thank them for their impartiality: a pack of kinless loons—for my part I can never see a cousin or friend in the wrong!''"

The Commons, being faced with a position such as that which I have indicated, apparently felt as a body little or no scruple as to the means to be used to extricate them from the difficulties which that position presented. They did not pause to consider that, as Guizot remarks, the precedents for proceeding by Bill of Attainder (which dispensed the Judges from all Law) belonged to periods of tyranny, and had even been denounced soon after their occurrence as iniquitous; nor, seemingly, did they appreciate the fact that the monstrosities committed by Henry VIII all had the legal sanction of a precisely similar process.

Digressing for a moment, I would point out that, though Hallam's criticism in this relation may at first sight appear of a contrary order to that which I am here hazarding, this is not really so, as closer examination will reveal the fact that in such relation Hallam does but record a series of views which may be advanced for and against the infliction of punishment by means of a retroactive provision contained in an *ex post facto* piece of legislation, and in that instance merely deals with the proposition in the abstract—reserving his opinion on the concrete occasion to a later stage of his criticism.

Proceeding with my remarks concerning the action of the Commons in passing the Bill of Attainder, I would further say that their attitude in declining to reply to Strafford's Counsel—who were assigned to him for the purpose only of dealing with the Law—coupled with that of St. John—who appeared before the Lords not as Counsel but as a Member of the Commons' body—seems to demonstrate conclusively that (though doubtless honestly imbued with a sense of the righteousness of their cause and the vital necessity for ensuring its triumph at this juncture) they deemed Strafford their lawful prey, and thought that, having that prey in their net, they were only concerned to see that he did not escape. That Strafford living was a menace to those liberties of which the King's subjects had a constitutional right to the enjoyment, cannot be denied any more than it can be denied that those subjects, the Commons of England, through their representatives in their own House of Parliament, had the right to endeavour to safeguard those liberties by all lawful means ; but it is, I opine, at least doubtful whether such right could, at any rate from the moral standpoint, validly be extended to what was in effect the authorisation and procurement of a supreme dispensation of all the Law then existing in Strafford's favour. The adoption of such a course would certainly appear to be un-English, and one not to be justified save under careful scrutiny, and hardly likely to be excused even as the result of minute examination and consideration of all the surrounding circumstances, including the ways and means open to the House of Commons, who, be it noted, by their procedure in regard to the Bill of Attainder transposed their own position from that of Accusers to that of Arbiters of Strafford's fate.

To quote Hallam's own summary of the position in this regard, "*The attainder of Strafford could not be justified unless it were necessary ; nor necessary if a lighter penalty would have been sufficient for the public security,*" in continuation whereof he treats such summary as "a preliminary question, upon which the whole mainly turns."

Let us pause here to consider whether the question raised in that manner can rightly be treated as a mere preliminary to the determination of the whole subject as Hallam suggests, or whether it may not possibly be more or less the master key to a solution of the entire problem?

This necessitates a reference to the concluding words of Hallam's able critique, where it is submitted that Strafford "*died justly before God and man, though we may deem the precedent dangerous, and the better course of a magnanimous lenity unwisely rejected; and in condemning the Bill of Attainder, we cannot look upon it as a crime.*"

It is a cardinal maxim with at least one of the European nations, that "Necessity knows no law," but, though England has suffered experiences that have rendered her no stranger *to the application* of this maxim, it is one which her constitution has steadfastly refused to recognise, even though it has adopted that of the ancient Romans "*Salus reipublicæ suprema lex*" with its subordinate principle "*Inter arma silent leges.*" Were the contrary the case, Necessity would be paramount at all times, to the entire exclusion of Law, and would in effect constitute a Law unto itself—a state of affairs which would create not Safety, but Danger, to the public welfare, and would also involve in certain criminal proceedings an enquiry, not as to whether a crime had in fact been committed, but as to whether any excuse therefor could be deemed to have arisen from the necessities of the circumstances connected therewith, a situation which, to use homely language, would in effect be placing the cart before the horse.

It seems to me that the surrounding circumstances compel us to recognise this, that, whether viewed in the abstract or as a concrete instance, the expiation of Strafford's offences (serious though they, and the position they involved, undoubtedly were) by

his death as a result of *ex post facto* legislation constitutes a blot on the escutcheon of those concerned, unless it can be shown, *either*, that his Judges (the Lords) were, in the light of the evidence adduced on the Impeachment contumacious beyond all doubt, *or*, that the circumstances leading up to his death were such as to peremptorily demand that mode of expiation as the only one which could ensure the safety of the Kingdom; so that (to paraphrase Hallam on this point) it would appear that Strafford's attainder can be justified if it were essential on the ground that a mitigated penalty would not have secured the public safety—but *it still remains to be seen whether this can be deemed the master key to the solution of the whole problem.*

That Strafford's Judges (the Lords) were not contumacious, is, I think, recognised by all the learned writers to whom I have made reference; and moreover, the very circumstances under which the Bill of Attainder was procured show this to have been the case.

There therefore, would appear to remain solely for consideration, the question of whether the public safety could have been secured by the infliction of a lighter penalty than that of death; but, as I shall presently endeavour to show, I do not consider that the answer to this question will, in the circumstances, wholly dispose of the problem, for, it is to my mind, a necessary corollary to the proposition concerning the justification of Strafford's Attainder on the ground of the requirements of public safety, *that in fact such Attainder and his subsequent execution should have taken place on that ground.*

Let us then examine not only the causes of the Impeachment (which have been fully dealt with already), but also the motives of those who instituted and conducted such Impeachment and who also originated the proceedings on the Bill of Attainder.

We have seen that Strafford, prior to his ennoblement, was a member of the popular party subsequently led by Pym in succession to Sir John Eliot, and we have also seen that he took a prominent part in securing the passage of the Petition of Right—in championing which, he gave vent to utterances that marked him as being, at that time, one of the foremost opponents of the Court party ; but we have also noticed that he early forsook those principles which he had solemnly sworn to hold as a beacon for his future guidance, and that when he did so, Pym, with equal solemnity, gave him the assurance that his departure from party and principles would eventually lead to another equally serious rupture, namely, the severance of his head from his shoulders. We have further remarked in the course of the Impeachment, the severity, undoubtedly amounting to vindictiveness, of the attitude adopted by the Commons towards Strafford. We have seen how they, whose Managers consisted of several eminent Counsel, refused Strafford the services of any, save regarding matters of Law only, (though it is only fair to add that this was the common practice in those days in regard to proceedings in the Law Courts concerning matters of a seditious nature), and that to the arguments of these they refused to reply, under the plea that to have done so would have been derogatory to the dignity of their House. We have further seen, that having selected their Tribunal and arraigned the accused before it on specific charges with the culminating one of High Treason, the Commons, as the result of mature debate held towards the termination of the investigation of those charges by their own selected Tribunal, deemed it requisite to adopt the methods of that monster of iniquity, Henry VIII, under precedent of forms and proceedings utilised by those who had only sought by such methods to eradicate the illegality of acts on a par with those which were laid to the charge of Strafford.

But, on the other hand, we have seen that King Charles had not only directly countenanced, but actually fostered, abuses of

government of the most unconstitutional nature; that he had not hesitated to persecute those who ventured to interpose between his royal will and its accomplishment; that he was prepared to go to the most inordinate lengths to enable him to govern (or rather we should say misgovern) his subjects in such manner as he himself thought most fitting, to the entire exclusion of all freedom of conscience and personal liberty; and that he had carefully selected his instruments (of whom Strafford formed one) to aid him in these unlawful purposes. We have also seen that when Strafford was committed to the Tower, the King took upon himself to assure him that he should not suffer either in Life, Honour or Fortune, and deliberately connived at his escape from the toils wherewith he was surrounded.

Taking the foregoing as summarising the arguments for and against the Attainder and Execution, it may, I think, be regarded as tolerably clear that, had Strafford ever regained freedom of action, the public safety would undoubtedly have been in danger, and that, at least while Charles remained on the throne, even perpetual imprisonment or degradation and banishment of Strafford might subsequently have proved but a broken reed whereon to entrust the safety of the Kingdom.

On the other hand, it seems equally certain that the Commons, even allowing for the extreme difficulty of the situation wherewith they were faced, were, to use a colloquialism, "out for blood" from start to finish, and their conduct throughout the proceedings furnishes intense weight to the argument that Strafford was (as Jesse tritely puts it) "foredoomed", and to the further arguments that, though the public safety was involved, such consideration was to the Commons but a secondary matter in this instance, and that the real cause of the execution was to a large extent the desire for the gratification of their vengeance on the part of his opponents.

It is therefore, I believe, between these two lines of argument that they who seek the solution of this interesting but extremely difficult problem (which Hallam views as "not seeming to admit of a demonstrative answer") must as a "dernier resort," choose—and many, (in their endeavour to preserve impartiality, coupled with that spirit of ultra-fairness which the true Englishman always seeks to display alike in criticism as in the forum of debate and on the field of battle) will doubtless regard the position in much the same light as that in which Sir Walter Scott (the most fair-minded of all fair-minded writers) viewed the circumstances concerning Mary Queen of Scots, when, as a reason for not undertaking her biography, he, with the innate honesty which at all times sprang so spontaneously from him, stated that "his opinion was contrary to his feeling."



